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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925

No. 193

FRANK L. SMITH, CICERO J. LINDLY, HAL W. TROVILLION, ET AL., ETC., ET AL., APPELLANTS,

vs.

ILLINOIS BELL TELEPHONE COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS

FILED OCTOBER 30, 1925

(30,677)

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INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 11, 1925

INDEX

[fol. 1 & 2] [Caption omitted]

[fol. 3] **IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION**

In Equity. No. 388

ILLINOIS BELL TELEPHONE COMPANY, a Corporation, Plaintiff,

vs.

FRANK L. SMITH, CICERO J. LINDLY, HAL W. TROVILLION, WILLIAM J. SMITH, P. H. MOYNIHAN, EDWARD H. WRIGHT, and WILLIAM BURKHARDT, the Persons Constituting the Illinois Commerce Commission of the State of Illinois, and EDWARD J. BRUNDAGE, Attorney General of the State of Illinois, Defendants.

BILL OF COMPLAINT—Filed June 18, 1924

To the Honorable Judges of the District Court of the United States for the Southern District of Illinois, Southern Division:

Illinois Bell Telephone Company, plaintiff, brings this its bill of complaint against the defendants, Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State of Illinois, and Edward J. Brundage, Attorney General of the State of Illinois, and for its cause of action alleges:

[fol. 4]

First

The plaintiff is a corporation duly created and existing under and pursuant to the laws of the State of Illinois, with its principal office in the City of Chicago in said State, and during all the times herein referred to, it or its predecessor in ownership, Central Union Telephone Company, a corporation organized under the laws of the State of Illinois, has owned and operated a telephone system in the City of Peoria and Villages of Averyville, Bartonville, East Peoria and vicinity, in the State of Illinois, furnishing telephone service to its subscribers and patrons therein.

That the plaintiff is subject to the jurisdiction of the Interstate Commerce Commission under the Act of Congress entitled "The Act to Regulate Commerce, June 4, 1887," and amendments thereto, and is a common carrier as therein defined.

Second

That the defendants first hereinabove named are the persons constituting the Illinois Commerce Commission of the State of Illinois, which is an administrative body duly created by the statutes of said State, and they will be hereafter referred to collectively as the Illinois

Commerce Commission, or the Commission, and the defendant last named, Edward J. Brundage, is Attorney General of the State of Illinois; that the defendant Frank L. Smith, a member and chairman of the Illinois Commerce Commission, is a citizen and resident of Livingston County, Illinois; that the defendant Cicero J. Lindly, a member of the Illinois Commerce Commission, is a citizen and resident of Bond County, Illinois; that the defendant Hal W. Trovillion, a member of the Illinois Commerce Commission, is a citizen [fol. 5] and resident of Williamson County, Illinois; that the defendant William J. Smith, a member of the Illinois Commerce Commission, is a citizen and resident of Lake County, Illinois; that the defendant P. H. Moynihan, a member of the Illinois Commerce Commission, is a citizen and resident of Cook County, Illinois; that the defendants Edward H. Wright and William Burkhardt, members of the Illinois Commerce Commission, are citizens and residents of Cook County, Illinois, and that the defendant Edward J. Brundage, Attorney General of the State of Illinois, is a citizen and resident of Sangamon County, Illinois.

Third

That this suit is of a civil nature in equity, and is brought for the purpose of enjoining the defendants from enforcing the collection by the plaintiff of the rates and charges for telephone exchange service to its subscribers and patrons within the City of Peoria and the Villages of Averyville, Bartonville, East Peoria and vicinity, all in the State of Illinois, and hereafter collectively referred to as the Peoria exchange, specified in Rate Schedule "I. P. U. C. 1." and to further restrain said defendants from collecting or attempting to collect any penalties, fines, or forfeitures, either under any statute or otherwise, by reason of the charging and collecting by the plaintiff of higher rates and charges for telephone service in said exchange than in said Rate Schedule "I. P. U. C. 1" specified; that this suit arises under the Constitution and laws of the United States, in that, as plaintiff avers, the rates for telephone exchange service in the said Peoria exchange to which plaintiff is limited by the defendant Commission, to-wit: The said Rate Schedule "I. P. U. C. 1." are confiscatory of plaintiff's property used and useful in furnish- [fol. 6] ing to its subscribers and patrons telephone service in said exchange, and that to compel plaintiff to continue charging the rates and charges provided in said Rate Schedule "I. P. U. C. 1" deprives plaintiff of its property without due process of law, and denies plaintiff the equal protection of the laws, in violation of its rights under the Fourteenth Amendment to the Constitution of the United States.

The amount in controversy in this suit exceeds the value or sum of Three Thousand Dollars ($3,000), exclusive of interest and costs.

Fourth

That on November 28, 1919, the Central Union Telephone Company made effective a certain schedule of rates known as I. P. U. C. 1,

for telephone service in the City of Peoria, and the Villages of Averyville, Bartonville, East Peoria and the vicinity, known as the Peoria exchange and hereinafter so referred to, which said schedule of rates so made effective was finally approved by the Public Utilities Commission of Illinois in its order of July 31, 1920, in case No. 9311, a true and correct copy of said order being attached hereto as Exhibit "A," and made a part hereof.

That on or about the first day of April, 1920, the Central Union Telephone Company, an Illinois corporation, then owning and operating the said Peoria exchange, established and filed with the Public Utilities Commission of Illinois, predecessor of the Illinois Commerce Commission, a schedule of rates for telephone service applying to said Peoria Exchange, effective May 1, 1920, designated "Illinois Public Utilities Commission No. 2, cancelling Illinois Public Utilities Commission No. 1" (herein referred to as Rate Schedule [fol. 7] "I. P. U. C. 2"); that in said filing said Central Union Telephone Company complied with all the provisions of law and rules of the Commission; that on the 19th day of April 1920, the said Public Utilities Commission entered an order suspending the effective date of said Rate Schedule until August 29, 1920; that on the 28th day of July, 1920, said Public Utilities Commission entered an order resuspending the effective date of said Rate Schedule until February 26, 1921; that on the 23d day of February, 1921, said Public Utilities Commission entered an order purporting and attempting to suspend the effective date of said Rate Schedule until August 26, 1921; that on the 28th day of July, 1921, the Illinois Commerce Commission, successor to said Public Utilities Commission, entered an order purporting and attempting to suspend the effective date of said Rate Shedule until the 23d day of February, 1922; that various hearings were held by said Commission as to the justice and reasonableness of said Rate Schedule "I. P. U. C. 2," to-wit: On the 12th and 13th days of November, 1920, and on the 3d day of December, 1920, at which hearings said Central Union Telephone Company and its successor in ownership of said exchange, plaintiff, appeared and introduced evidence in support of Rate Schedule "I. P. U. C. 2;" that on the 3d day of December, 1920, Chicago Telephone Company having theretofore acquired certain property of said Central Union Telephone Company, including said Peoria exchange, was substituted in said proce-dings for said Central Union Telephone Company; that on or about the 23d day of December, 1920, the name of the Chicago Telephone Company was changed to Illinois Bell Telephone Company, plaintiff herein; that although plaintiff often requested said Illinois Commerce Commission, to set said proceedings for further hearing, said Commission failed and refused to hold further hearings [fol. 8] in said proceedings; that on the 31st day of October, 1921, said Illinois Commerce Commission entered an order, served on plaintiff after November 1, 1921, purporting and attempting to permanently suspend, cancel and annul said Rate Schedule "I. P. U. C. 2," a copy of which order is attached hereto, made a part hereof and marked "Exhibit B;" that on the 2d day of December, 1921, plaintiff applied to said Illinois Commerce Commission for a rehear-

ing of said last mentioned order, which was denied by said Commission on the 20th day of December, 1921.

Fifth

That thereupon plaintiff perfected and prosecuted an appeal to the Circuit Court of Peoria County in said proce-dings; that said appeal was finally determined by the order of said Court on April 6, 1922, reversing said order of October 31, 1921, and remanding said cause to said Illinois Commerce Commission for further proceedings therein; that said cause was redocketed with said Commission and that hearings were had by said Commission thereon on the 6th day of June, 1922, and on the 6th day of July, 1922, at which hearings further evidence was introduced by the plaintiff, that a further hearing was held on the 13th day of September, 1922, that on the 16th day of September, 1922, plaintiff filed with said Illinois Commerce Commission its written motion requesting said Commission to make effective for said Peoria exchange a temporary schedule of rates pending the entry of final order in said cause, a copy of which motion is attached hereto, made a part hereof, and marked "Exhibit C;" that on the 28th day of September, 1922, said Commission entered an order denying the request of plaintff to make effective a temporary schedule of rates pending final determination of said cause, a copy of which order is attached hereto, made a part hereof [fol. 9] and marked "Exhibit D;" that on the 5th day of July, 1923, plaintiff wrote and sent to said Commission, by United States mail, postage prepaid, a letter calling to the attention of said Commission the delay in the determination of said cause, and further calling to the attention of said Commission the fact that the revenues derived from the operation of said Peoria exchange failed to meet the operating expenses of said exchange, and requesting said Commission to set said cause for early hearing, a copy of which letter is attached hereto as "Exhibit E," and hereby made a part hereof; that notwithstanding said request of plaintiff, and notwithstanding the fact that the revenues so derived are insufficient to even pay the cost of operating said exchange, which fact could have been readily verified by the Commission at any time, as the books of the plaintiff were at all times open to its inspection and examination, said Commission has refused and failed, and continues to refuse and fail to continue further in said cause and to determine the issues in said cause, and has refused and failed, and continues to refuse and fail to determine whether or not the rates and charges provided in Rate Schedule "I. P. U. C. 2" are just and reasonable, and at no time has the plaintiff acquiesced or consented to any delay on the part of said Commission.

Sixth

That the said actions and failures to act of said Commission, and its refusal to make effective for said Peoria exchange a temporary schedule of rates pending the determination of said cause as requested by plaintiff, all of which is hereinabove more particularly set forth, has continued in effect, and now continues in effect for said

Peoria exchange the rates and charges provided in said Rate Schedule [fol. 10] "I. P. U. C. 1," which rates do not yield a fair return on the fair value at the time of use of the property of the plaintiff used or useful in rendering intrastate telephone service to the subscribers and patrons of the plaintiff in said Peoria exchange, and are insufficient even to pay the cost of rendering telephone service to the subscribers and patrons of the plaintiff in said exchange, whereby plaintiff has suffered and continues to suffer great and irreparable loss, and its property is taken without due process of law, and it is denied the equal protection of the law, in violation of its rights under the Fourteenth Amendment to the Constitution of the United States.

Seventh

That at all the times herein mentioned said plaintiff and its predecessor in ownership of said Peoria exchange, said Central Union Telephone Company, have exercised in the management of said exchange all reasonable economies consistent with adequate and efficient service to its subscribers and patrons; that the net revenues derived by the plaintiff from the operations of said Peoria exchange left available for return, after the payment of operating expenses and taxes, $46,312.45 for the calendar year 1921; that for the following periods the revenues derived from said operations of said property have not been sufficient to pay said operating expenses and taxes, and have not paid any return on the said property of the plaintiff in said exchange, but have left deficits as follows:

For the calendar year 1922, $48,158 deficit.

For the calendar year 1923, $64,953 deficit.

That the plaintiff has been incurring monthly deficits from said operations in said exchange for the several past months of the year [fol. 11] 1924, whereby the plaintiff has suffered and continues to suffer great and irreparable loss and damage, and its property has been taken and continues to be taken without due process of law.

Eighth

That the Public Utilities Commission of Illinois in its said order of July 31, 1920, attached hereto as Exhibit "A," found and determined that the reasonable value of the property used and useful in furnishing telephone service in the Peoria exchange as of June 30, 1919, was $1,320,000; that the plaintiff and the Central Union Telephone Company, its predecessor in title, expended the sum of $1,617,533 in net additions to said property from July 1, 1919 up to and including December 31, 1923; that the original cost to the plaintiff of said property is in excess of $3,000,000, and that the reproduction cost new of said property is at least the sum of $4,200,000, including working capital, materials and supplies, and going value; that the present fair value of said property is at least the sum of $3,800,000, including working capital, materials and supplies and going value.

Ninth

That the fair annual return which the plaintiff is entitled to earn under rates imposed upon it by public authority is an amount equal to not less than eight per cent of the fair value at the time of its use of its property used or useful in the rendition of its telephone service in the said Peoria exchange; that the revenues resulting from the operations of said property in the year ending March 31, 1924, were $322,000 less than an eight per cent return on the said minimum fair value of said property, and that the schedule of rates set forth in said I. P. U. C. No. 2 would yield additional revenue to the plain-
[fol. 12] tiff of not to exceed $190,000, which would leave for return on the said value of said property less than $172,000, or approximately four and one-half per cent return on said minimum fair value, and less than six per cent return on the cost of said property.

Tenth

That unless the defendants are restrained and enjoined as herein prayed, they will, as plaintiff believes and so alleges, attempt to compel the plaintiff to limit its rates and charges to the rates and charges provided in said Rate Schedule "I. P. U. C. 1," and to enforce the penalties prescribed by the laws of the State of Illinois, and plaintiff, its directors, officers, agents and employees will be deterred and prevented by the threat of said penalties from charging lawful rates in said Peoria exchange, and from charging any rates other than the rates prescribed by said Rate Schedule "I. P. U. C. 1," whereby plaintiff will be forced to submit to the confiscation of its property without due process of law, as aforesaid.

Unless the defendants are restrained and enjoined, as herein prayed, the plaintiff's subscribers in said Peoria exchange will, as plaintiff believes and so alleges, be induced and caused to resist and refuse payment of any rates other than those prescribed in said Rate Schedule "I. P. U. C. 1." The present number of plaintiff's subscribers in said Peoria exchange is more than 15,700, and the present average monthly bill rendered to them is less than $5.60. Because of the nature of the business of plaintiff, and the fact that the amounts due monthly from its subscribers for telephone service are generally small, it is impracticable for plaintiff to enforce collection thereof by actions of law. Plaintiff has no practical way to enforce collection of its rates and charges except by cutting off and
[fol. 13] refusing service for default in payment of its bills rendered monthly, therefor, and its subscribers will, as plaintiff believes and so alleges, institute large numbers of suits in said Peoria exchange to restrain the plaintiff from cutting off and denying service for such non-payment of bills and for damages, and plaintiff will be thereby subjected to endless multiplicities of suits, and that the issues which would be presented in each such suit are presented and should and will be decided in this action.

That the plaintiff has no plain, speedy or adequate remedy at law.

Wherefore plaintiff prays:

First. That the rates prescribed in said Rate Schedule "I. P. U. C. 1" be declared to be in violation of the Constitution of the United States, and to be void;

Second. That the defendants and each of them, and all other persons, be temporarily and permanently restrained and enjoined from any attempt to compel the plaintiff, its officers, agents or employees, to observe or keep in force the rates and charges for telephone service prescribed in said Rate Schedule "I. P. U. C. 1;"

Third. That the defendants and each of them, and all other persons, be temporarily and permanently restrained and enjoined from taking any steps or proceedings against plaintiff, its officers, agents, or employees, to enforce any penalties, fines, forfeitures or any other remedy, either under any statute or otherwise, by reason of the charging and collecting by the plaintiff of higher rates and charges for telephone service in said Peoria exchange than in said Rate Schedule "I. P. U. C. 1" provided; and,

Fourth. That the plaintiff have such other and further relief as may be just and equitable in the premises.

[fols. 14 & 15] May it please your honors to grant unto the plaintiff a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said defendants, Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State of Illinois, and Edward J. Brundage, Attorney-General of the State of Illinois, commanding them and each of them on a day certain to be named therein and under a certain penalty to be and appear before this honorable court, then and there to answer, but not under oath, answer under oath being hereby expressly waived, all and singular the premises, and to perform and abide by such orders, direction or decree as may be made against them in the premises, and that pending the final hearing of this cause, a temporary restraining order and an interlocutory injunction may be issued as above prayed.

And the plaintiff will ever pray.

Illinois Bell Telephone Company, by Cutting, Moore & Sidley and Philip B. Warren, Its Solicitors. Philip B. Warren, William D. Bangs, of Counsel for Plaintiff.

Sworn to by F. O. Hale and Ben B. Boynton. Jurat omitted in printing.

[fol. 16] EXHIBIT A TO BILL OF COMPLAINT

Case No. 9311

In re Application of CENTRAL UNION TELEPHONE COMPANY for Increase in Rates at Peoria

Opinion and Order

On July 22, 1919, the Central Union Telephone Company filed a revised schedule of rates known as I. P. U. C. 1, covering telephone service in Peoria, and vicinity, which schedule it was proposed to make effective August 1, 1919. A hearing on the matter being deemed necessary, the Commission approved an order suspending the effective date until December 20, 1919. On November 28, 1919, the Commission approved an order authorizing the schedule to become effective temporarily until January 31, 1920, and subsequently approved supplemental orders temporarily extending the effective period of the proposed rates pending completion of the necessary investigation. The present rates and those for which final approval is asked, as to the principal classes of service, are as follows:

	Present	Annual rates proposed for final approval and temporarily in effect
Individual line business stations.....	$60.00	$72.00
Two-party line business stations.....	42.00	60.00
Four-party line business stations.....	30.00	.....
Individual line residence stations.....	36.00	39.00
Two-party line residence stations.....	24.00	30.00
Four-party line residence stations.....	18.00	27.00
Rural party line stations, business.....	24.00	33.00
Rural party line stations, residence.....	18.00	24.00

All interested parties having been duly notified, and due publication [fol. 17] of notice of the filing of the revised schedule of rates with the Commission, having been made by the Central Union Telephone Company, the matter came on for hearing before the Commission on November 25, 1919, December 11, 1919, January 15, 1920, January 28, 1920, February 25, 1920, and May 18, 1920. At these hearings, the Central Union Telephone Company was represented by Ben. B. Boynton, attorney, and the City of Peoria, by R. H. Radley, corporation counsel.

The Central Union Telephone Company introduced an inventory of the physical property appraised by three methods. One appraisal was based on mean average costs for labor and material for the period from 1914 to 1918, inclusive; the second on prices introduced by Mr. Kempster B. Miller in a former case involving telephone rates in Peoria, Case No. 3043; and third on prices introduced by the Commission's engineers in the same proceeding. In each case the net additions to plant as shown by the company's books for the period

from June 30, 1915, to June 30, 1919, were added at cost. The company also introduced statements of its operating revenues and expenses for the ten months' period ending October 31, 1919; an estimate of one year's operating income and expenses based upon actual operating results for the six months' period from July 1, 1919, to December 31, 1919; a statement of the classification and distribution of subscribers' stations as of September 30, 1919; traffic data covering inter-office trunking; a statement of the estimated annual increases in operating expenses resulting from increased wages and salaries made effective between July 1, 1919, and December 31, 1919, but not included in the statement of expenses for the year 1919; and proof of publication of notice of intention to apply for increased rates.

The City of Peoria introduced exhibits showing summary of ap-
[fol. 18] praisal of the property involved as of June 30, 1919; estimate of assumed fair annual operating revenues and expenses based on operating results of the company for the year ending December 31, 1918; the order entered by the Commission in Case No. 3043 approved April 17, 1918; general traffic studies applied to inter-office trunking; and comparative studies of employees' wages in Peoria and other exchange systems.

The Commission introduced in evidence a report made by its accounting department covering operating revenues and expenses for the period January 1, 1918, to October 31, 1919; statement of wages paid by the Central Union Telephone Company at Peoria; comparative balance sheets; and report of service investigations made by the engineering department.

The record shows that for a number of years last past and up to midnight of July 31, 1918, the Central Union Telephone Company had in effect in Peoria a certain schedule of rates for telephone service and that on midnight July 31, 1918, its property and business, including Peoria, was taken over and managed thereafter by the United States Government, acting through the Postmaster General. The conduct of the company's affairs by the United States Government continued from July 31, 1918, to midnight July 31, 1919, at which time the property and business was returned to the Central Union Telephone Company under and pursuant to an Act of Congress approved July 11, 1919. The Government of the United States while operating the property, continued in effect the same schedule of rates as had been in effect, until June 11, 1919, at which time a schedule of increased rates for telephone service at Peoria was placed in effect.

This schedule of rates was authorized and approved by the Postmaster General prior to June 6, 1919. The Act of Congress ap-
[fol. 19] proved July 11, 1919, under which the property was returned to the company provided that existing toll and exchange telephone rates if established or approved by the Postmaster General on or prior to June 6, 1919, should continue in force for a period of four months after the Act took effect, unless sooner modified by authorities having jurisdiction over them.

On July 22, 1919, the Central Union Telephone Company in its own name and as a public utility, filed its schedule of increased rates

known as I. P. U. C. I. covering telephone service in Peoria and vicinity, which schedule of rates contains the same rates as were approved by the Postmaster General prior to June 6, 1919, and placed in effect by the Postmaster General June 11, 1919.

In a former case, Docket No. 3043, involving the rates of the Central Union Telephone Company at Peoria, and vicinity, this Commission found the fair value of the Peoria exchange property, based on inventories and appraisals of such property as it existed on June 30, 1915, to be $1,100,000. All of the appraisals introduced in evidence in Case No. 3043, were based on an inventory made of the Peoria exchange property as it existed on June 30, 1915, and the record shows that this inventory was made a part of the record by stipulation between the company and the City of Peoria.

The reproduction cost new of the property as introduced by the Central Union Telephone Company, using mean average prices for labor and material for the period 1914 to 1918, plus the net additions to plant for the period from June 30, 1915, to June 30, 1919, at cost is $1,752,133, and the present condition cost, on the same basis is $1,517,842. The estimated cost of establishing the business attached to the Peoria exchange is given as $403,633 and the amount or work- [fol. 20] ing capital allocable to the Peoria exchange is $38,423. The total reproduction cost new of the Peoria exchange property as of June 30, 1919, on this basis, therefore, is $2,491,278 and the total present condition cost is $2,246,987.

The reproduction cost new of the physical property, based upon the inventory introduced, using the same unit prices as were used by Mr. Kempster B. Miller in Case No. 3043, and including net additions to plant at cost, from June 30, 1915, to June 30, 1919, with the working capital and estimated cost of establishing business is $1,975,828, and the present condition cost is $1,794,572. The fair value submitted by the Central Union Telephone Company, using the value as previously fixed by the Commission in Case No. 3043, plus net additions to plant for the period from June 30, 1915, to June 30, 1919, is $1,387,089.

The Central Union Telephone Company contended that the value of the property used and useful in furnishing telephone service at Peoria, and vicinity, has increased since the finding of the Commission in Case No. 3043 and that the company is entitled to the benefit of that increase in value. The city contended that the order entered in Case No. 3043, less deductions due to accrued depreciation, is binding on the parties as to the matters therein decided, and that the only increase that can be added to the value of the property as determined by the Commission in Case No. 3043 is the depreciated cost of the net additions made to the property since the fixing of said value. The various elements entering into the value of the property were exhaustively considered by the Commission in making the final determination as to the value of the property devoted to furnishing telephone service in Peoria in the previous case involving telephone rates at Peoria. Original costs, costs to reproduce, and normal [fol. 21] average costs were all fully considered. All elements of value both tangible and intangible were included in the total fixed

by the Commission and the Commission is of the opinion, and finds, that, for the purposes of this case, the value as determined in Case No. 3043 is a proper valuation insofar as it represents property involved in the present proceeding.

It appears, however, that the Commission in fixing a value for the property in the previous Case No. 3043 allowed the sum of $46,543 to be included for net additions to plant from June 30, 1915, the date of the inventory used, to June 30, 1917.

In the instant case the net additions to plant from June 30, 1917, to June 30, 1919, have been shown, in the record, to amount to $287,089. Since the net additions to plant from June 30, 1915, to June 30, 1917, amounting to $46,543, were included in the total valuation fixed by the Commission in Case No. 3043, only net additions from June 30, 1917, to June 30, 1919, may properly be included in any valuation to be made herein.

On this basis, net additions amounting to $240,546 at cost, less accrued depreciation, of $24,055, leaves $216,491 which may be included as a part of the present Peoria property.

As a result of careful consideration of the record in this case, the Commission is of the opinion, and finds, that for the purposes of this case the fair value of the property of the Central Union Telephone Company at Peoria as of June 30, 1919, should be determined on the basis of the valuation as made in Case No. 3043, plus the net additions from June 30, 1917, to June 30, 1919, depreciated.

In connection with the service investigations made by the engineering department of the Commission, the Commission's en- [fol. 22] gineers determined the physical condition of the plant by inspection. Based upon such inspection and a careful consideration of normal life tables, the value of the average annual depreciation now occurring in the physical portion of the plant is estimated to be $88,200, which estimate the Commission finds to be reasonable.

In Case No. 3043, the Commission held that a reasonable rental to be paid the American Telephone and Telegraph Company by the Central Union Telephone Company on transmitters, receivers, and induction coils, should be 55 cents per instrument, per annum. The Central Union Telephone Company contended that this allowance should be increased because of the increased cost of the parts in question, but did not introduce evidence to support this claim for an increased allowance. In the previous case involving telephone rates in Peoria, the Commission gave very careful consideration to this item of expense. The record in the instant case does not contain evidence in support of any increase except evidence of the most general character as to the increased cost of the equipment furnished by the parent company. It appears, therefore, in the absence of evidence to the contrary, and the Commission finds, that the allowance as fixed in the previous case to cover the rental of transmitters, receivers and induction coils is reasonable and that the operating expenses as shown should be adjusted accordingly.

The City of Peoria introduced exhibits tending to show that the traffic expense in connection with the operation of the telephone system at Peoria is excessive due to the fact that another type of switching equipment had not been installed. The Central Union

Telephone Company introduced exhibits and testimony showing that the present trunking between exchanges is necessary, but that it might be theoretically possible to reduce trunking expense in the [fol. 23] main exchange by the installation of other equipment. The possible estimated annual reduction in traffic expense, using present wages paid by the Central Union Telephone Company, due to the adoption of this expedient, is conceded to be $9,273. The telephone company, however, contends that its present trunking arrangements are the best that could be made under the conditions confronting it, and it objects to any deductions being made from its actual operating expenses incurred for trunking.

For the purpose of this case, it is not necessary to decide whether this deduction should be made, as the rates under consideration are shown to be reasonable, whether the operating expenses are so reduced or not. Therefore, the Commission will not at this time pass upon the question of whether the operating expenses should be so reduced.

If the operating expenses were adjusted in accordance with the city's contention, the estimated annual operating expenses for the year ending December 31, 1919, based upon the actual operating results under the proposed rates and including an allowance to provide an adequate reserve for depreciation as above set forth, and also including taxes and other deductions from net income, would be $498,193. The annual operating revenue for the year ending December 31, 1919, based upon revenues for the six months' period from July 1, 1919, to December 31, 1919, during which time the proposed rates have been in effect, and including that portion of toll revenue properly allocable to the Peoria local exchange system, was $596,695. The net income available for return, after giving due consideration to rent deductions, amortization, and non-operating revenues, would be $95,226.

The Central Union Telephone Company introduced exhibits and supported the exhibits with testimony in which it was shown that [fol. 24] annual increases in salaries and wages made during the period from July 1, 1919, to December 31, 1919, but not included in the estimated operating expenses for the year ending December 31, 1919, amount to $25,503. When this necessary increased operating expense is taken into account, the amount available for return would be $69,723, which is equal to an annual return of 5.2 per cent upon the estimated fair value of the property.

After carefully considering the evidence, the Commission is of the opinion, and finds:

(1) That for the purposes of this case, a reasonable value of the property used and useful in furnishing telephone service in Peoria, County of Peoria, and vicinity, and the business attached thereto, including every element of value, tangible and intangible, as of June 30, 1919, is $1,320,000;

(2) That a reasonable monthly allowance as an item of operating expense to provide an adequate reserve for depreciation is $7,360, plus 6 per cent of the cost of all annual additions that may be made to the plant in the future;

(3) That the schedule of rates known as I. P. U. C. 1, of the Central Union Telephone Company applying to Peoria, and vicinity, is just and reasonable, and should be approved.

It is, therefore, ordered by the Public Utilities Commission, of Illinois, as follows:

Section 1. That the Central Union Telephone Company be, and the same is hereby, permitted and authorized to place in effect the schedule of rates on file with the Commission, designated as I. P. U. C. 1, covering telephone service in the City of Peoria, and vicinity, effective August 1, 1920, provided written notice of the effective date [fol. 25] of the said schedule of rates is filed with the Commission not later than August 1, 1920; or effective at any subsequent date, provided written notice of the effective date of the said schedule of rates is filed with the Commission not less than ten days prior thereto; and when notice of the effective date of the said schedule of rates is filed with the Commission, as specified herein, and the said schedule of rates is posted or filed in the office of the public utility, all as required by the Public Utilities Act of Illinois and General Order No. 28, adopted by the Commission, the said schedule of rates shall be the legal rates covering telephone service in the City of Peoria, and vicinity.

Section 2. That the Central Union Telephone Company set aside a monthly allowance of $7,350 to provide a reserve against depreciation, plus 6 per cent per annum of the cost of all annual additions that may be made to the plant located at Peoria, Illinois, in the future.

Section 3. That all items of expense having to do with the upkeep of the plant except those specifically designated in Section 14, Uniform System of Accounts for Telephone Companies, issued by the Commission, shall be charged to Account 115, Depreciation of Plant and Equipment.

By order of the Commission, at Springfield, Illinois, this thirty-first day of July, 1920.

[fol. 26] EXHIBIT B TO BILL OF COMPLAINT

STATE OF ILLINOIS:

ILLINOIS COMMERCE COMMISSION

10426

In the Matter of the Proposed Advance in Rates for Telephone Service Furnished in PEORIA, AVERYVILLE, BARTONVILLE, EAST PEORIA, and PEORIA HEIGHTS and Vicinity Stated in Rate Schedule I. P. U. C. 2 of the Central Union Telephone Company, now the Illinois Bell Telephone Company.

Permanent Suspension Order

By the COMMISSION:

On March 31, 1920, the Central Union Telephone Company, now the Illinois Bell Telephone Company, filed Rate Schedules I. P. U. C. 2 in which it was proposed to advance the rates for telephone service in Peoria, Averyville, Bartonville, East Peoria and Peoria Heights, and vicinity. The proposed rates were suspended from time to time pending investigation.

Hearings were held in this matter and some evidence adduced which among other things includes data covering the cost of operation during the early part of the year 1920, but the investigation of this matter has not been completed. Since the filing of the proposed rates there has been a marked decline in the prices of labor and materials entering into the cost of rendering telephone service. Under these conditions it would be unfair at this time to fix rates for the future. It would not be fair to the petitioner nor to the patrons of the petitioner to attempt to fix rates under conditions and [fol. 27] upon the cost of operation that prevailed in the early part of the year 1920, when such conditions and costs do not now prevail.

The Commission therefore finds that Rate Schedules I. P. U. C. 2 of the Central Union Telephone Company, now the Illinois Bell Telephone Company, covering rates for telephone service in Peoria, Averyville, Bartonville, East Peoria, Peoria Heights and vicinity, should be permanently suspended.

It is therefore ordered that Rate Schedules I. P. U. C. 2 of the Central Union Telephone Company, now the Illinois Bell Telephone Company, covering rates for telephone service in Peoria, Averyville, Bartonville, East Peoria, Peoria Heights and vicinity be, and the same are hereby, permanently suspended, annulled and cancelled.

By order of the Commission at Springfield, Illinois, this 31st day of October, 1921.

(Signed) Julius Johnson, Secretary.

[fl. 28] EXHIBIT C TO BILL OF COMPLAINT

STATE OF ILLINOIS:

BEFORE THE ILLINOIS COMMERCE COMMISSION

10426

In the Matter of the Proposed Advance in Rates for Telephone Service in PEORIA, AVERYVILLE, BARTONVILE, EAST PEORIA, and PEORIA HEIGHTS Rendered by the Illinois Bell Telephone Company.

The Illinois Bell Telephone Company having filed its schedule of rates herein on April 1, 1920, and the above case having been heard by this Commission during November and December, 1920, and the permanent suspension order entered by said Commission on October 31, 1921, having been reversed by the Circuit Court of Peoria County, and the case having been thereafter heard by this honorable Commission on June 6 and July 7, 1922, said Illinois Bell Telephone Company requests a prompt decision by said Commission and moves that pending the entry of a final order herein, a temporary schedule of rates be made effective on less than thirty days' notice, to prevent the further confiscation of the property of said Illinois Bell Telephone Company in Peoria, which is contrary to the Constitution of the State of Illinois and the United States of America.

Dated September 14, 1922.

Illinois Bell Telephone Company, (Signed) by Cutting, Moore & Sidley, Its Attorneys. Wm. D. Bangs, Counsel.

[fol. 29] EXHIBIT D TO BILL OF COMPLAINT

STATE OF ILLINOIS:

ILLINOIS COMMERCE COMMISSION

10426

In the Matter of the Proposed Advance in Rates for Telephone Service in PEORIA, AVERYVILLE, BARTONVILE, EAST PEORIA, and PEORIA HEIGHTS Rendered by the Illinois Bell Telephone Company.

Interlocutory Order

By the Commission:

The Illinois Bell Telephone Company having filed with this Commission on September 16, 1922, its request and motion for a temporary order approving a temporary schedule of rates on less than thirty days' notice; and it appearing to the Commission that the hearing and taking of evidence in the above entitled cause is very

rapidly nearing a close and should, if carried forward with diligence and energy, be completed wtihin a few months; and it being a matter of common knowledge that a change of rates in a large community at short intervals of time is more or less disconcerting to the service rendered by a utility and tends to destroy the public relations with the utility in the community served;

Therefore the Commission is of the opinion and finds that the request and motion of the Illinois Bell Telephone Company of September 16, 1922, for a temporary order establishing a temporary rate on less than thirty days' notice, should be denied without prejudice.

It is therefore ordered that the request and motion of the Illinois Bell Telephone Company of September 16, 1922, for a temporary order establishing a temporary rate on less than thirty days' notice [fol. 30] i e, and the same is hereby, denied without prejudice.

By order of the Commission at Springfield, Illinois, this 28th day of September, 1922.

(Signed) Julius Johnson, Secretary. (Seal.)

[fol. 31] EXHIBIT "E" TO BILL OF COMPLAINT

Illinois Bell Telephone Company, 212 West Washington Street, Chicago

July 5, 1923.

Illinois Commerce Commission, Springfield, Ill.

Peoria Rate Case, No. 10126

GENTLEMEN: The last hearing in the above case was held on September 28, 1922, and then continued, pending the preparation of reports by the Commission's accountants and engineers.

The Company's most recent statements of the operation of the Peoria exchange show that the revenues are failing to meet the operating expenses by approximately $4,000 a month.

We respectfully request that this case be set for hearing at as early a date as possible.

Yours very truly, (Signed) W. D. Bangs, General Counsel.

[fol. 32] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF ALBERT P. ALLEN

Affidavit of Albert P. Allen on Revenues under Rate Schedule I. P. U. C. No. 2

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

Albert P. Allen, being duly sworn, on oath deposes and says:

That he is commercial engineer of the plaintiff, Illinois Bell Telephone Company, and resides in Chicago, Illinois; that he graduated

from the Worcester Polytechnic Institute in the year 1889 with a degree of Bachelor of Science in mechanical engineering and in the year 1890 with a degree of Bachelor of Science in electrical engineering.

That he was employed by the American Telephone and Telegraph Company from August, 1890, to June, 1903, during which time he occupied the positions of district inspector, Chicago, Illinois; district inspector, Boston, Massachusetts; general inspector in charge of Long Lines Equipment, headquarters in New York; that he was traffic engineer of the Central Union Telephone Company from June, 1903, to June, 1911; that he was traffic engineer of the central group operating in the States of Illinois, Michigan, Wisconsin, Ohio and Indiana from June, 1911, to January, 1914, when he was transferred to the Chicago Telephone Company (now Illinois Bell Telephone Company) as commercial engineer, which position he [fol. 33] now occupies. That while commercial engineer he had and has charge and supervision of the making of schedules of rates for the plaintiff and the preparation of studies in relation thereto, making of the estimates of revenues resulting from rates in effect or proposed, and the study of the effect of changes of rates on the revenues of the company.

That he is familiar with all rates and charges which are made by the plaintiff for the telephone service and facilities furnished by it and with the schedules of such rates which are now and have been from time to time filed by the plaintiff with the Illinois Commerce Commission and its predecessor, the Illinois Public Utilities Commission, and that he has carefully examined Rate Schedules I. P. U. C. No. 1 and I. P. U. C. No. 2 filed with the Illinois Public Utilities Commission, covering the rates for telephone exchange service in the territory known as the Peoria exchange, which said territory includes the City of Peoria, and Villages of Averyville, Bartonville, East Peoria and vicinity, in the State of Illinois.

That this affiant has prepared a table showing the rates filed in said Rate Schedule I. P. U. C. No. 1 and I. P. U. C. No. 2 and indicating all differences in the rates in said respective schedules, classified as to the rates for the respective classes of service, which said table is as follows:

[fol. 34] Illinois Bell Telephone Company, Peoria, Illinois, Exchange

Class of service	Monthly rate	
	I. P. U. C. No. 1	I. P. U. C. No. 2
Business:		
Individual	$6.00	$8.00
Two Party	5.00	6.75
Four Party	2.50	....
Extension	1.00	1.25

Class of service	Monthly rate I. P. U. C. No. 1	Monthly rate I. P. U. C. No. 2
Residence:		
Individual	3.25	4.00
Two Party	2.50	3.25
Four Party	2.25	2.50
Extension	.50	.75
Rural:		
Business	2.75	4.00
Residence	2.00	2.50
Private branch exchange, flat rate:		
Cord Board (Hotel)	2.75	4.00
(Others)	3.00	4.00
Cordless Board	2.50	2.50
Trunks	8.00	10.50
Stations (Hotel)	.41⅔	.60
(Others)	1.00	1.25
Private branch exchange, measured rate:		
Cord Switchboard—1 position non-multiple* switchboard, not exceeding 30 jacks, and operator's set	....	4.00
Additional Switchboard Positions, each	....	2.50
Additional Jacks, per strip of 10	....	.75
Cordless Board and Operator's Set (capacity 3 trunks and 7 stations)	....	2.50
Stations on same premises, each	....	.75
One Trunk and 200 or less messages	....	8.50
Additional Trunks, each	....	2.50
Additional Messages, each	....	.03
Power Generator Line, each ¼ mile or fraction	....	.83
Cord Switchboards will be furnished only to subscribers contracting for at least 2 trunks and 400 messages per month.		
Intercommunicating system, flat rate:		
In addition to rates for trunk and stations (minimum equipment 1 trunk and 4 stations)	.50	....
Switching Devices, each (in addition to station rate)	....	.75
Trunks, Intercommunicating Residence, each	3.25	4.00

*Multiple switchboard will be furnished when desired at a monthly rental based on the cost of switchboard, with associated wiring and apparatus installed.

Class of service	Monthly rate I. P. U. C. No. 1	Monthly rate I. P. U. C. No. 2
Intercommunicating system, measured rate:		
Switching Devices, each (in addition to station rate)	Not quoted	.75
Joint User	1.50	2.75
Additional Jack Strips	.50	.75
Power Generation Units	....	.83
Extra mileage units:		
P. B. X.	.60	.75
Individual	.60	.75
Two Party	.40	.50
Four Party	.25	.50

[fol. 35] That this affiant has made a careful and detailed estimate as to the effect on the revenues of the plaintiff in the event that the rates prescribed by said Schedule I. P. U. C. 2 should become effective, said estimate being based upon the judgment and experience of the plaintiff, as aforesaid, and his opinion, based upon said judgment and experience, of the effect of the said change in rates on the Company's subscribers in said exchange who will, as shown by the actual experience of the Company, make changes in their class of service as a result of the increase of rates in said Schedule I. P. U. C. No. 2, and it is the opinion of this affiant that said Schedule of Rates I. P. U. C. No. 2 would cause an increase in the total annual revenue of the plaintiff in said Peoria exchange of not to exceed $190,000 per annum, which said opinion is based upon all the matters aforesaid.

(Signed) Albert P. Allen.

Subscribed and sworn to before me this 17th day of June, A. D. 1924. (Signed) E. D. Meyers, Notary Public for the County and State Aforesaid. (Seal.)

[fol. 36] In United States District Court

Affidavit of Arthur Perrow on Revenues and Expenses

United States of America,
State of Illinois,
County of Cook, ss:

Arthur Perrow, being first duly sworn on oath, deposes and says:

He is Chief Accountant of the plaintiff company and has been engaged for sixteen years in accounting work for Bell System Telephone Companies.

That the records, books and accounts of the plaintiff are and have been since January 1, 1913, kept in accordance with the Uniform System of Accounts, as prescribed by the Interstate Commerce Commission under an Act of Congress, which was adopted in identical form by the State Public Utilities Commission of Ilinois on July 1, 1914, and continued in effect by the Illinois Commerce Commission law effective July 1, 1921, as the Uniform System of Accounts for Classes A and B Telephone Companies in Illinois.

That the afliant is thoroughly familiar with the records, books and accounts of the plaintiff showing the results of the operations of the plaintiff in the territory of the plaintiff known as the Peoria exchange, and that the statements hereinafter made by this affiant are founded upon said records, books and accounts; that the revenues and expenses (other than interest charges) resulting from the operations of the Company in the Peoria exchange, are as follows for the periods stated:

[fol. 37]

Peoria, Illinois, Exchange

Income Statement

	Year 1921	Year 1922	Year 1923	Apr. 1, 1923, to Mar. 31, 1924
Exchange Revenues	$615,329.82	$645,608.49	$683,629.27	$697,395.13
Toll Revenues	63,252.55	73,587.23	77,637.14	76,623.19
Miscellaneous Operating Revenues	15,191.06	12,919.56	21,204.06	22,966.38
Non-operating Revenues	287.87	143.12	431.52	286.64
Gross Revenues	$694,061.30	$732,258.40	$782,901.99	$797,271.34
Less: Licensee Revenue	30,361.26	32,157.31	34,061.39	34,627.62
Total Revenues	$663,700.04	$700,101.09	$748,840.60	$762,643.72
Current Maintenance	110,009.12	154,299.72	157,119.30	143,854.92
Depreciation of Plant and Equipment	99,156.62	112,965.22	176,013.86	184,323.11
Traffic Expenses	266,187.90	316,233.97	303,164.58	274,730.13
Commercial Expenses	65,713.59	79,745.96	81,052.49	83,073.10
General and Miscellaneous Expenses	20,415.75	25,960.62	25,941.39	21,678.96
Taxes	53,536.93	55,988.54	67,791.87	70,051.75
Other Expenses and Deductions	2,367.68	3,452.76	2,710.16	2,846.04
Total Expenses	$617,387.59	$748,646.79	$813,793.65	$780,558.01
Balance Available for Return	$46,312.45	$48,545.70 Deficit	$64,953.05 Deficit	$17,914.29 Deficit

That the cost of the physical property used and useful in rendering telephone service in said Peoria exchange on December 31, 1923, was $3,187,106. That the net additions to said property from July 1, 1919, to December 31, 1923, amounted to $1,617,533.

That, based on his knowledge of the operations of the plaintiff in said exchange, it is the opinion and judgment of this affiant that the amount reasonably required for working cash capital for said property is not less than $73,000.

(Signed) Arthur Perrow.

Subscribed and sworn to before me this 17th day of June, A. D. 1924. (Signed) E. D. Meyers, Notary Public for the County and State Aforesaid. (Seal.)

[fol. 38] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JOHN R. TURNER ON VALUATION

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

John R. Turner, being duly sworn, on oath deposes and says:

That he resides in Glen Ellyn, Illinois, and that he is Appraisal Engineer for the Illinois Bell Telephone Company; that he has had over fifteen years' experience in the telephone business; that during the first three years of his association with the Bell System, he was employed by the Chesapeake and Potomac Telephone Company and the New York and New Jersey Telephone Company.

That he entered the employ of the Chicago Telephone Company, now the Illinois Bell Telephone Company, in the early part of February, 1912, engaging in the engineering of outside telephone plant and continuing this work up to his entering the army in July, 1917, at which time he was Central Division Engineer for the City of Chicago, having charge of the engineering of a very large and important section of the City, including the principal business section.

That, during his service in the army, he was a Major in the Signal Corps, and as such had further experience through supervising the construction of telephone and telegraph plant, while in this country and abroad.

That on returning to Chicago early in 1919, after being honorably [fol. 39] discharged from the army, he entered the employ of the Chief Engineer's Department of the central group of Bell Telephone Companies, consisting of the Chicago Telephone Company, the Wisconsin Telephone Company, the Michigan State Telephone Company, and the Cleveland Telephone Company; that during his connection with these companies, he engaged in valuation and cost work for Illinois, Wisconsin, Michigan, and Indiana, gaining a familiarity with the plants and equipments of the several companies, and acquiring a knowledge of their costs.

That in 1920, at the time of the dissolution of the central group of Bell Telephone Companies, he was transferred to the Chief Engineer's office of the Chicago Telephone Company, now the Illinois Bell Telephone Company, with which department he is still connected, having charge of all inventories and appraisals of the company's property.

That this affiant is thoroughly familiar with the records of the Company showing the costs of labor and material from the year 1915 to the date hereof; that during the last few years he has appraised over $200,000,000 of telephone property in the State of Illinois and elsewhere, and has testified in numerous cases before the Illinois Commerce Commission as to the reproduction cost new and the reproduction cost new less depreciation of the plaintiff's properties.

That he has carefully examined an inventory and appraisal of the property used and useful in the Peoria exchange made as of June 30, 1915, which this affiant is informed and believes to be the appraisal relied upon by the Public Utilities Commission of the State of Illinois in entering its order attached to the bill of complaint herein as Exhibit "A," and has caused to be compiled from the books and records [fol. 40] of the plaintiff, the gross additions to and displacements from said property from July 1, 1915, to September 30, 1923, and has determined from the records of the plaintiff the percentages of increase or decrease of the material and labor costs of said gross additions, and displacements for said period, and has thereby determined the reproduction cost new as of September 30, 1923, of the total plant in service of said plaintiff used and useful in rendering telephone exchange service in said Peoria exchange; that said reproduction cost new is at least $3,200,000, not including general equipment or working capital, or any general overhead charges, and not including the going value of said property.

Affiant further says that in appraising property of any kind, there are two general elements to be considered: first, those costs which are directly assignable to a specific thing, such as the cost of a pole or a switchboard; and, second, those costs which are of a general character applied to the plant as a whole, usually designated as overhead costs. That this affiant is familiar with the cost of telephone construction work, both as to the specific items and as to the overhead items mentioned above, and that after giving careful consideration to all of the facts, including the character of the property and the manner in which it was built, it has been determined by this affiant that an additional amount of at least fifteen per cent of the cost of land, buildings and plant should be added for overhead costs to the amounts heretofore stated.

That this affiant has made a determination of the going value of the Company's property and business in said exchange; that there is a difference in value of the completed physical property and the value of that property with its present business established operating [fol. 41] with a trained and efficient organization, and that in the opinion of this affiant, the going value of said property at the date hereof is at least $380,748. That this going value of the property has been determined with consideration of the financial history of

the Peoria exchange, but is not in any way based on the past losses of the plaintiff in operating said exchange, or the value of any of the plaintiff's franchises.

That this affiant is familiar with and has accepted the affidavit of Mr. Perrow as to the cash working capital, and has determined the general equipment and supplies used and useful in the conduct of the plaintiff's business in said exchange.

That this affiant is familiar with the property of the plaintiff in the Peoria exchange, and has from time to time made special inspections with a view to observing the condition of said property and the parts thereof; that he is familiar with the condition of said property as to the physical deterioration thereof. That based upon his knowledge of said property, deponent states that the said property in service used and useful in rendering service in the Peoria exchange is in at least 91 per cent condition.

That this affiant is familiar with the original cost of the property, the value thereof as fixed and determined by the Public Utilities Commission in its order attached to the bill of complaint herein as Exhibit "A," and the appraisal used in said order, and the net additions to said property since the date of said order, and the course of prices of labor and materials used in telephone construction.

That after giving careful consideration to the foregoing facts and matters, and to the plaintiff's property, its history, location and [fol. 42] character, and to all other facts in affiant's knowledge affecting its value, it is the opinion of the affiant that the present fair value of the entire property of the plaintiff used and useful and exclusively devoted by it to the furnishing of telephone exchange service in the Peoria exchange is not less than $3,800,000, and that the detail of the reproduction cost of said property is shown in the following table:

Peoria Exchange

Reproduction Cost of Property

		Reproduction costs	
		New	New less depreciation
Exchange plant, Oct. 1, 1923.....		$3,268,225	$2,985,980
General Overheads:			
Omissions and contingencies Engineering Administration and legal Taxes, insurance and interest during construction	15%	490,234	447,897
Exchange Plant, Oct. 1, 1923		$3,758,459	$3,433,877

	Reproduction costs	
	New	New less depreciation
General Equipment	49,026	37,707
Exchange Physical Property, Oct. 1, 1923	$3,807,485	$3,471,584
Working Capital—Cash	73,000	73,000
—Supplies	37,894	36,255
Going Value (10%)	380,748	380,748
Total Exchange Property, Oct. 1, 1923	$4,299,127	$3,961,587
Net Additions Oct. 1, 1923, to Apr. 30, 1924	27,517	27,517
Total Exchange Property, May 1, 1924	4,326,644	3,989,104

And further affiant sayeth not.

(Signed) John R. Turner.

Subscribed and sworn to before me this 17th day of June, A D. 1924. (Signed) E. D. Meyers, Notary Public for the County and State Aforesaid. (Seal.)

[fol. 43] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF U. F. CLEVELAND ON REVENUES & EXPENSES

STATE OF ILLINOIS,
County of Cook, ss:

U. F. Cleveland, being duly sworn, on oath says:

That he resides in Chicago, Illinois. That he was first employed by the Chicago Telephone Company in the year 1892, in its accounting department, and excepting for a period of about eleven months during 1909 and 1910, he has been continuously employed by said company in accounting work. That since July 1, 1920, he has been the chief accounting officer of the company with the title of General Auditor, and has complete charge of all of the company's books, records and accounts and is thoroughly familiar with them.

That this affiant has read and is familiar with the affidavit of Mr. Perrow filed in this cause, and the statements of revenues and expenses of the plaintiff derived from operations of said Peoria exchange, as set forth in said affidavit and believes said statements to be true and correct; that in said statements there are credited as revenues derived from operations within said exchange all receipts

from messages between points within said exchange and a proportion of the receipts from messages between points within said exchange and points without. That the basis used in establishing said proportion is the usual and customary basis of settlement for telephone service interchanged between the plaintiff and approximately six [fol. 44] hundred independent telephone companies with which it has connections in the State of Illinois, which basis was established under the approval of the Illinois Public Utilities Commission; that included in such proportion there is a proportion of the receipts from interstate telephone messages, which proportion is not less in amount per message than the proportion of receipts from intrastate messages; that this affiant is of the opinion, from his knowledge and experience in telephone accounting and an examination of the records of the plaintiff's operations in said Peoria exchange, that the inclusion in the income statements set forth in said Perrow's affidavit of the interstate operations of the plaintiff in said exchange (which cover approximately five per cent of the total toll operations of the plaintiff therein), does not materially affect the results shown by said statements.

(Signed) U. F. Cleveland.

Subscribed and sworn to before me this 17th day of June, A. D. 1924. (Signed) E. D. Meyers, Notary Public for the County and State Aforesaid. (Seal.)

[fol. 45] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF B. C. LINGLE ON RATE OF RETURN

STATE OF ILLINOIS,
County of Cook, ss:

B. C. Lingle, being first duly sworn, on oath says that he resides at Chicago, Illinois; that he is an investment banker and is Vice President of the Harris Trust and Savings Bank, which is engaged in an investment business; that he has been continuously employed for twelve years in passing on investments made by said bank and the purchase of securities by it; that said bank is one of the largest houses in the United States handling public utility securities, it and its predecessor having been in business for over forty years.

That the cost of borrowed money to public utilities on first mortgage of the companies' properties is approximately six per cent; for example, the first mortgage five per cent bonds of the plaintiff issued in July, 1923, in the amount of Fifty Million Dollars ($50,000,000) cost the Company approximately 5.6 per cent, including amortization and discount.

That the prudent financing of a corporation such as the plaintiff requires that at least fifty per cent of its capital requirements should be raised by the sale of stock thereby creating an equity in the property. That it is fundamental that public utilities such as the plaintiff, which expect to continue permanently in business and which are con-

tinuously called upon to increase their investments in order to meet [fols. 46 & 47] the requirements imposed upon them, must be able to pay a fair dividend on their stocks and earn a reasonable surplus over such dividend so as to give assurance to investors of the reasonable continuance of the dividend.

That there is active competition among public utilities for new funds and the plaintiff is compelled to meet this competition and to offer investors inducements equal to those offered by others, and that investors must have reasonable assurance of the integrity of the investment and the safety of their money.

That in the opinion of this affiant, a public utility such as the plaintiff, in order to have a ready market for its stock, and obtain par therefor, should earn and pay a dividend of at least eight per cent thereon, and earn a surplus of from two to three per cent over said dividend.

(Signed) B. C. Lingle.

Subscribed and sworn to before me this 17th day of June, A. D. 1924. (Signed) Glenn O. Hoffnines, Notary Public for the County and State Aforesaid. (Seal.)

Indorsed: Filed June 18, 1924. S. T. Burnett, Clerk.

[fol. 48] IN UNITED STATES DISTRICT COURT

SUMMONS AND SHERIFF'S RETURN—Filed June 21, 1924

The United States of America to Frank L. Smith, Cicero J. Lindly, Hal. W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright, and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State of Illinois, and Edward J. Brundage, Attorney General of the State of Illinois, Greeting:

We command you and every of you that you appear before our Judge of our District Court of the United States of America, for the Southern District of Illinois, at Springfield, in said District, on the 8th day of July, A. D. 1924, at 9 o'clock A. M., to answer the bill of complaint of Illinois Bell Telephone Company, a corporation, this day filed in the office of the Clerk of said court in the City of Springfield, then and there to receive and to abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Southern District of Illinois to execute.

Witness the Honorable Louis FitzHenry, Judge of the District Court of the United States for the Southern District of Illinois, at Springfield, aforesaid, this 18th day of June, in the year of our Lord one thousand nine hundred and twenty-four, and of our Independence the 148th year.

S. T. Burnett, Clerk. (L. S.)

Memorandum

The above-named defendants are notified that unless they and each of them shall file their answer or other defense in the office of the Clerk of said Court, at Springfield aforesaid, on or before the twentieth day after service of this process, excluding the day of such service, the bill of complaint filed herein will be taken against them as confessed, and a decree entered accordingly.

S. T. Burnett, Clerk.

[File endorsement omitted.]

UNITED STATES OF AMERICA,
Southern District of Illinois,
Southern Division, ss:

I have duly served the within writ on the within named Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright and William Burkhardt, the persons constituting the Illinois Commerce Commission, by reading the same and delivering seven true copies thereof to Julius Johnson, secretary of the Illinois Commerce Commission, and by service on the within named Edward J. Brundage, Attorney General of the State of Illinois, by reading the same and delivering a true copy thereof to A. D. Rodenburg, Assistant Attorney General of the State of Illinois. All done at Springfield, Sangamon County, Illinois this 19th day of June, A. D. 1924. The within named Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright, William Burkhardt and Edward J. Brundage not found in this district.

J. E. McClure, U. S. Marshal, by Rena Tomlins, Deputy.

Marshal's fees $16.06.

[fols. 48a & 49] IN UNITED STATES DISTRICT COURT

[Title omitted]

TEMPORARY RESTRAINING ORDER—June 18, 1924

This day came the plaintiff, Illinois Bell Telephone Company, by Philip B. Warren, its solicitor, and moved the Court for a temporary restraining order, in accordance with the prayer of its bill of complaint filed herein, and in support of its said motion plaintiff tendered to the court certain affidavits filed herein.

And the Court having heard counsel for the plaintiff in support of its motion, and having read said bill and affidavits, and it appearing to the Court that the telephone rates prescribed by the order of the Public Utilities Commission of Illinois, complained of in the said bill of complaint and therein referred to as I. P. U. C. No. 1, have confiscated and if further enforced will continue to confiscate the property of the plaintiff, and have caused and if further enforced will continue to cause the plaintiff great and irreparable and continuing injury.

It is therefore ordered and decreed that the defendants Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State of Illinois, and Edward J. Brundage, Attorney General of the State of Illinois, be, and they are hereby severally enjoined and restrained until the further order of the Court, from attempting to compel the plaintiff, its officers, agents or employees to observe or enforce the rates for telephone service set forth in said bill of complaint and therein specifically referred to as I. P. U. C. No. 1, and that the defendants and all other persons be, and they are hereby, enjoined until the further order of the Court, from taking any steps or proceedings against the plaintiff, its officers, agents or employees to enforce any penalties or any other remedy against the plaintiff for disregarding said rates.

This order shall not take effect until the plaintiff shall enter into its bond or undertaking in the sum of One Hundred Thousand Dollars ($100,000) conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained hereby, and further conditioned so that in the event that an interlocutory injunction as prayed for in the said bill of complaint shall not be awarded to the plaintiff upon or before the expiration of this order, the plaintiff shall refund to its several subscribers affected hereby, either in cash or by credit upon subsequent bills, any sums paid by them in the meantime in excess of the sums chargeable to them pursuant to the said order of said Commission hereinabove referred to, the enforcement of which is hereby temporarily restrained and enjoined.

And it is further ordered that the plaintiff is hereby authorized during the time this order is in effect, to increase its rates and charges for telephone exchange service in the territory of the plaintiff known as the Peoria exchange, as set forth in said bill of complaint, but not in excess of the rates and charges set forth in I. P. I. C. No. 2, specifically referred to in said bill of complaint.

June 18, 1924, 12:30 P. M.

Louis FitzHenry, District Judge.

Indorsed: Filed and entered June 18, 1924 at 12.40 o'clock P. M. S. T. Burnett, Clerk.

Marshal's Return

UNITED STATES OF AMERICA,
Southern District of Illinois,
Southern Division, ss:

I have duly served the within writ on the within named Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright and William Burkhardt, the persons constituting the Illinois Commerce Commission, by delivering a true copy thereof to Julius Johnson, secretary of the Illinois Commerce

Commission, and by service on the within named Edward J. Brundage, Attorney General of the State of Illinois, by delivering a true copy thereof to A. D. Rodenburg, assistant Attorney General of the State of Illinois. All done at Springfield, Sangamon County, Illinois, this 19th day of June, A. D. 1924. The within named Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright, William Burkhardt and Edward J. Brundage not being found in this district.

J. E. McClure, U. S. Marshal, by Rena Tomlins, Deputy.

Marshal's fees $16.06.

[fols. 50 & 51] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS BILL OF COMPLAINT—Filed July 30, 1924

And now come the above named defendants, by Edward J. Brundage, Attorney General of the State of Illinois, and Shelton F. McGrath and R. H. Radley, special assistants Attorney General, their attorneys, and move the court to dismiss the bill of complaint filed herein for want of equity, and to grant such other and further relief in the premises as may be just.

Edward J. Brundage, Attorney General of the State of Illinois, and Shelton F. McGrath, R. H. Radley, Special Assistants Attorney General, Attorneys for said Defendants.

[File endorsement omitted.]

[fol. 52] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERLOCUTORY INJUNCTION—July 30, 1924

This matter coming on to be heard by the Statutory Court consisting of George T. Page, Circuit Judge, Louis FitzHenry, District Judge, and Walter C. Lindley, District Judge, on motion of plaintiff for an interlocutory injunction, and a full hearing having been had in open Court upon the bill and affidavits in support thereof,

The Court finds that the rates in force under the order of the Illinois Commerce Commission known as I. P. U. C. No. 1 are confiscatory, and that the interlocutory order should be allowed, and is hereby allowed;

It is therefore ordered by the Court that the defendants Frank L. Smith, Cicero J. Lindly, Hal. W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State

of Illinois, and Edward J. Brundage, Attorney General of the State of Illinois, be, and they are hereby severally enjoined and restrained, pending the determination of this cause and until the further order [fols. 53 & 54] of this Court, from attempting to compel plaintiff, its officers, agents or employees, to observe or put in force the rates for telephone service set forth in the Bill of Complaint filed herein and therein specifically referred to as I. P. U. C. No. 1, and that the defendants and all other persons be and they are hereby restrained and enjoined until the further order of this Court from taking any steps or proceedings against the plaintiff, its officers, agents or employees, to enforce any penalties or any other remedy against the plaintiff for disregarding said rates.

This order is made upon the express condition that any rates charged by the plaintiff shall not exceed the rates set forth in the schedule of rates described in the Bill of Complaint as I. P. U. C. No. 2.

And upon the further express condition that the plaintiff shall enter into its bond or undertaking in the sum of One Hundred Thousand Dollars ($100,000.00), said bond to be in form as the bond filed by the plaintiff upon the granting of the preliminary restraining order, to be approved by the Judge of the District Court of the United States for the Southern District of Illinois, and conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained hereby; and further conditioned so that in the event that this interlocutory injunction shall be hereafter dissolved, the plaintiff shall refund to its several subscribers, either in cash, or by ... upon subsequent bills, any sums paid by them in excess of the same chargeable to them pursuant to any reasonable rate first hereafter made by the Illinois Commerce Commission.

It is further ordered that this order shall be in full force and effect until the final determination of this case, or until reasonable rates for the plaintiff are hereafter prescribed by the Illinois Commerce Commission or as otherwise may be provided by law.

July 30, 1924.

(Signed) George T. Page, Circuit Judge. Louis FitzHenry, District Judge. Walter C. Lindley, District Judge.

[fols. 55-58] Bond on Interlocutory Injunction for $100,000—Approved and filed April 2, 1924; omitted in printing

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[fol. 59] In United States District Court

[Title omitted]

Petition for Appeal—Sept. 17, 1924

To the Honorable Louis FitzHenry, Judge of the District Court of the United States for the Southern District of Illinois:

The above named defendants Frank L. Smith, Cicero J. Lindly, Hal. W. Trovillion, William J. Smith, P. H. Maynihan, Edward H.

Wright, and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State of Illinois and Edward J. Brundage, Attorney General of the State of Illinois, conceiving themselves aggrieved by the order entered on the 30th day of July, 1924, in the above entitled proceeding do hereby appeal from said order to the Supreme Court of the United States and they pray that this appeal may be allowed; and that a transcript of the record and proceeding and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Edward J. Brundage, Attorney General of the State of Illinois, Springfield, Illinois; Shelton F. McGrath, Peoria, Illinois; Richard H. Radley, Peoria, Illinois, Attorneys for Defendants.

[fol. 60] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Sept. 17, 1924

Now come the said defendants, Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, William J. Smith, P. H. Maynihan, Edward H. Wright, and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State of Illinois and Edward J. Brundage, Attorney General of the State of Illinois the appellants herein, and say that there is manifest error in the record in this cause, and assign as errors the following:

1. The District Court erred in taking jurisdiction of this case.

2. The District Court had no jurisdiction of this case for the reason that it was not shown that the State of Illinois was confiscating, or had confiscated, or was about to confiscate the property of the plaintiff in violation of the Fourteenth Amendment to the Constitution of the United States.

3. The District Court erred in holding that the State of Illinois was confiscating the property of the plaintiff in violation of the Fourteenth Amendment to the Constitution of the United States.

4. The District Court erred in entertaining this case and granting said interlocutory injunction when it did not appear with certainty that the State of Illinois would deprive the plaintiff of its property in violation of the Fourteenth Amendment to the Constitution of the United States.

5. The Court erred in granting the Temporary Restraining order and the right to complainant to increase its rates as therein provided.

6. The Court erred in granting the interlocutory injunction and the right to the complainant to increase its rates as provided in said order.

[fols. 61 & 62] 7. The Court erred in not requiring the bond provided for in the order granting such increase in rates and injunction to be executed by good and sufficient sureties.

8. The Court erred by inserting in said order the provision enjoining the fifteen thousand or more subscribers of complainant affected by the increase in rates allowed by the court, who were not made parties to this suit, from instituting any proceedings or taking any steps with reference to protecting their rights in connection with said increase in rates.

9. Said order granting said interlocutory injunction is inequitable and unjust.

Wherefore, appellants say there is manifest error in said record and pray that the order granting said interlocutory injunction be set aside.

Edward J. Brundage, Attorney General of State of Illinois, Springfield, Illinois; Shelton F. McGrath, Richard H. Radley, Attorneys for Appellants.

[File endorsement omitted.]

[fols. 63 & 64] In United States District Court

[Title omitted]

Order Allowing Appeal—Sept. 17, 1924

The above named defendants, Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, William J. Smith, P. H. Maynihan, Edward H. Wright, and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State of Illinois, and Edward J. Brundage, Attorney General of the State of Illinois, having duly filed their petitions for appeal and assignment of errors therewith, it is ordered by the court that an appeal to the Supreme Court of the United States from the order heretofore filed and entered herein on the 30th day of July, 1924 granted an interlocutory injunction against said defendants be, and the same is hereby allowed and that a certified transcript of the record, affidavits, documents and all proceedings herein be forthwith transmitted to said Supreme Court.

The appeal bond is fixed at $500.00 to be approved by the clerk of this court.

[fols. 65-67] Bond on Appeal for $500—Approved and filed Oct. 7, 1924; omitted in printing

[fols. 68 & 69] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Oct. 7, 1924

To the clerk of said Court:

Please prepare a complete record in the above cause for appeal to the Supreme Court of the United States in the above entitled case and incorporate therein copies of the following:

1. Placita.
2. Bill of Complaint and all Exhibits and affidavits accompanying same.
3. All orders of the District Court and Statutory Court including the orders granting the temporary restraining order and the interlocutory injunction.
4. The injunction bond.
5. The demurrer of the defendants to the bill of complaint.
6. The prayer for appeal.
7. The order allowing the appeal.
8. The appeal bond.
9. The citation and the return thereon.
10. A copy of this præcipe with proof of service of same upon plaintiff.

Dated this 30th day of September, 1924.

Edward J. Brundage, Attorney General of State of Illinois; S. F. McGrath, R. H. Radley, Attorneys for Defendants.

Received a copy of this præcipe this 7th day of October, A. D. 1924.

Cutting, Moore & Sidley, Philip B. Warren, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 70] CITATION—In usual form showing service on Cutting, Moore & Sidley et al.; filed Oct. 7, 1924; omitted in printing

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[fol. 71] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, S. T. Burnett, Clerk of the District Court of the United States for the Southern District of Illinois and keeper of the records and seals thereof, do hereby certify the foregoing to be a true and complete transcript of the proceedings had of record in said court in

the case entitled Illinois Bell Telephone Company, a corp. vs. Frank L. Smith, et als. No. 388, in equity (made in accordance with præcipe filed herein) as fully as the same appear from the records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Springfield, in said District, this 11th day of October, A. D. 1924.

S. T. Burnett, Clerk. (Seal of the District Court United States, Southern District Illinois.)

Endorsed on cover: File No. 30,677. S. Illinois D. C. U. S. Term No. 193. Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, et al., etc., et al., appellants, vs. Illinois Bell Telephone Company. Filed October 30th, 1924. File No. 30,677.

CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1935

No. 670

FRANK L. SMITH, CICERO L. LINDLY, HAL W. TROVILLION, ET AL., ETC., APPELLANTS,

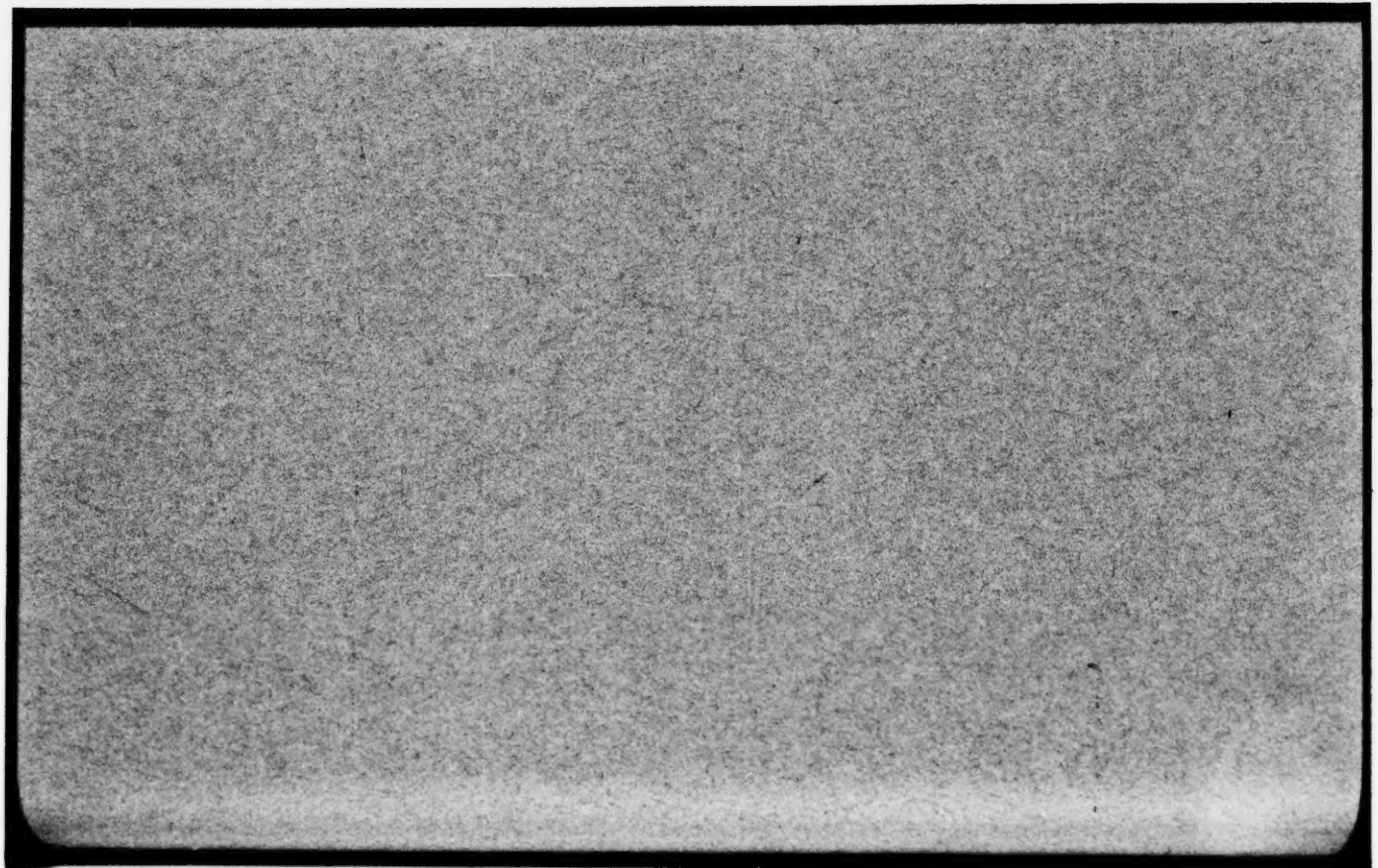
vs.

ILLINOIS BELL TELEPHONE COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS

FILED AUGUST 11, 1936

(31,393)



(31,393)

SUPREME COURT OF THE UNITED STATES

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FRANK L. SMITH, CICERO L. LINDLY, HAL W. TROVILLION, ET AL., ETC., APPELLANTS,

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INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 18, 1925

[fols. a & b] [Caption omitted]

[fol. 1] **IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION**

In Equity. No. 388

ILLINOIS BELL TELEPHONE COMPANY, a Corporation, Plaintiff,

vs.

FRANK L. SMITH, CICERO J. LINDLY, HAL W. TROVILLION, WILLIAM J. SMITH, P. H. MOYNIHAN, EDWARD H. WRIGHT, and WILLIAM BURKHARDT, the Persons Constituting the Illinois Commerce Commission of the State of Illinois, and EDWARD J. BRUNDAGE, Attorney General of the State of Illinois, Defendants.

BILL OF COMPLAINT—Filed June 18, 1924

To the Honorable Judges of the District Court of the United States for the Southern District of Illinois, Southern Division:

Illinois Bell Telephone Company, plaintiff, brings this its bill of complaint against the defendants, Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State of Illinois, and Edward J. Brundage, Attorney General of the State of Illinois, and for its cause of action alleges:

[fol. 2] First

The plaintiff is a corporation duly created and existing under and pursuant to the laws of the State of Illinois, with its principal office in the City of Chicago in said State, and during all the times herein referred to, it or its predecessor in ownership, Central Union Telephone Company, a corporation organized under the laws of the State of Illinois, has owned and operated a telephone system in the City of Peoria and Villages of Averyville, Bartonville, East Peoria and vicinity, in the State of Illinois, furnishing telephone service to its subscribers and patrons therein.

That the plaintiff is subject to the jurisdiction of the Interstate Commerce Commission under the Act of Congress entitled "The Act to Regulate Commerce, June 4, 1887," and amendments thereto, and is a common carrier as therein defined.

Second

That the defendants first hereinabove named are the persons constituting the Illinois Commerce Commission of the State of Illinois,

which is an administrative body duly created by the statutes of said State, and they will be hereafter referred to collectively as the Illinois Commerce Commission, or the Commission, and the defendant last named, Edward J. Brundage, is Attorney General of the State of Illinois; that the defendant Frank L. Smith, a member and chairman of the Illinois Commerce Commission, is a citizen and resident of Livingston County, Illinois; that the defendant Cicero J. Lindly, a member of the Illinois Commerce Commission, is a citizen and resident of Bond County, Illinois; that the defendant Hal W. Trovil-[fol. 3] lion, a member of the Illinois Commerce Commission, is a citizen and resident of Williamson County, Illinois; that the defendant William J. Smith, a member of the Illinois Commerce Commission, is a citizen and resident of Lake County, Illinois; that the defendant P. H. Moynihan, a member of the Illinois Commerce Commission, is a citizen and resident of Cook County, Illinois; that the defendants Edward H. Wright and William Burkhardt, member of the Illinois Commerce Commission, are citizens and residents of Cook County, Illinois; and that the defendant Edward J. Brundage, Attorney General of the State of Illinois is a citizen and resident of Sangamon County, Illinois.

Third

That this suit is of a civil nature in equity, and is brought for the purpose of enjoining the defendants from enforcing the collection by the plaintiff of the rates and charges for telephone exchange service to its subscribers and patrons within the City of Peoria and the Villages of Averyville, Bartonville, East Peoria and vicinity, all in the State of Illinois, and hereafter collectively referred to as the Peoria exchange, specified in Rate Schedule "I. P. U. C. 1," and to further restrain said defendants from collecting or attempting to collect any penalties, fines, or forfeitures, either under any statute or otherwise, by reason of the charging and collecting by the plaintiff of higher rates and charges for telephone service in said exchange than in said Rate Schedule "I. P. U. C. 1" specified; that this suit arises under the Constitution and laws of the United States, in that, as plaintiff avers, the rates for telephone exchange service in the said Peoria exchange to which plaintiff is limited by the defendant Commission, to-wit: The said Rate Schedule "I. P. U. C. 1," are confiscatory of plaintiff's propery used and useful in furnish-[fol.4] ing to its subscribers and patrons telephone service in said exchange, and that to compel plaintiff to continue charging the rates and charges provided in said Rate Schedule "I. P. U. C. 1" deprives plaintiff of its property without due process of law, and denies plaintiff the equal protection of the laws, in violation of its rights under the Fourteenth Amendment to the Constitution of the United States.

The amount in controversy in this suit exceed the value or sum of Three Thousand Dollars ($3,000), exclusive of interest and costs.

Fourth

That on November 28, 1919, the Central Union Telephone Company made effective a certain schedule of rates known as I. P. U. C. 1, for telephone service in the City of Peoria, and the Villages of Averyville, Bartonville, East Peoria and the vicinity, known as the Peoria exchange and hereinafter so referred to, which said schedule of rates so made effective was finally approved by the Public Utilities Commission of Illinois in its order of July 31, 1920, in case No. 9311, a true and correct copy of said order being attached hereto as Exhibit "A," and made a part hereof.

That on or about the first day of April, 1920, the Central Union Telephone Company, an Illinois corporation, then owning and operating the said Peoria exchange, established and filed with the Public Utilities Commission of Illinois, predecessor of the Illinois Commerce Commission, a schedule of rates for telephone service applying to said Peoria Exchange, effective May 1, 1920, designated "Illinois Public Utilities Commission No. 2, cancelling Illinois Public Utilities Commission No. 1" (herein referred to as Rate Schedule "I. P. U. C. 2"); that in said filing said Central Union [fol. 5] Telephone Company complied with all the provisions of law and rules of the Commission; that on the 19th day of April 1920, the said Public Utilities Commission entered an order suspending the effective date of said Rate Schedule until August 29, 1920; that on the 28th day of July, 1920, said Public Utilities Commission entered an order resuspending the effective date of said Rate Schedule until February 26, 1921; that on the 23d day of February, 1921, said Public Utilities Commission entered an order purporting and attempting to suspend the effective date of said Rate Schedule until August 26, 1921; that on the 28th day of July, 1921, the Illinois Commerce Commission, successor to said Public Utilities Commission, entered an order purporting and attempting to suspend the effective date of said Rate Schedule until the 23d day of February, 1922; that various hearings were held by said Commission as to the justice and reasonableness of said Rate Schedule "I. P. U. C. 2," to-wit: On the 12th and 13th days of November, 1920, and on the 3d day of December, 1920, at which hearings said Central Union Telephone Company and its successor in ownership of said exchange, plaintiff, appeared and introduced evidence in support of Rate Schedule "I. P. U. C. 2;" that on the 3d day of December, 1920, Chicago Telephone Company having theretofore acquired certain property of said Central Union Telephone Company, including said Peoria exchange, was substituted in said proceedings for said Central Union Telephone Company; that on or about the 23d day of December, 1920, the name of the Chicago Telephone Company was changed to Illinois Bell Telephone Company, plaintiff herein; that although plaintiff often requested said Illinois Commerce Commission, to set said proceedings for further hearing, said Commission failed and refused to hold further hear- [fol. 6] ings in said proceedings; that on the 31st day of October, 1921, said Illinois Commerce Commission entered an order, served

on plaintiff after November 1, 1921, purporting and attempting to permanently suspend, cancel and annul said Rate Schedule "I. P. U. C. 2," a copy of which order is attached hereto, made a part hereof and marked "Exhibit B;" that on the 2d day of December, 1921, plaintiff applied to said Illinois Commerce Commission for a rehearing of said last mentioned order, which was denied by said Commission on the 20th day of December, 1921.

Fifth

That thereupon plaintiff perfected and prosecuted an appeal to the Circuit Court of Peoria County in said proceedings; that said appeal was finally determined by the order of said Court on April 6, 1922, reversing said order of October 31, 1921, and remanding said cause to said Illinois Commerce Commission for further proceedings therein; that said cause was redocketed with said Commission and that hearings were had by said Commission thereon on the 6th day of June, 1922, and on the 6th day of July, 1922, at which hearings further evidence was introduced by the plaintiff, that a further hearing was held on the 13th day of September, 1922, that on the 16th day of September, 1922, plaintiff filed with said Illinois Commerce Commission its written motion, requesting said Commission to make effective for said Peoria exchange a temporary schedule of rates pending the entry of final order in said cause, a copy of which motion is attached hereto, made a part hereof, and marked "Exhibit C;" that on the 28th day of September, 1922, said Commission entered an order denying the request of plaintiff to make effective a temporary schedule of rates pending final determination of said cause, a copy of which order is attached hereto, made a part [fol. 7] hereof and marked "Exhibit D;" that on the 5th day of July, 1923, plaintiff wrote and sent to said Commission, by United States mail, postage prepaid, a letter calling to the attention of said Commission the delay in the determination of said cause, and further calling to the attention of said Commission the fact that the revenues derived from the operation of said Peoria exchange failed to meet the operating expenses of said exchange, and requesting said Commission to set said cause for early hearing, a copy of which letter is attached hereto as "Exhibit E," and hereby made a part hereof; that notwithstanding said request of plaintiff, and not withstanding the fact that the revenues so derived are insufficient to even pay the cost of operating said exchange, which fact could have been readily verified by the Commission at any time, as the books of the plaintiff were at all times open to its inspection and examination, said Commission has refused and failed, and continues to refuse and fail to continue further in said cause and to determine the issues in said cause, and has refused and failed, and continues to refuse and fail to determine whether or not the rates and charges provided in Rate Schedule "I. P. U. C. 2" are just and reasonable, and at no time has the plaintiff acquiesced or consented to any delay on the part of said Commission.

Sixth

That the said actions and failures to act of said Commission, and its refusal to make effective for said Peoria exchange a temporary schedule of rates pending the determination of said cause as requested by plaintiff, all of which is hereinabove more particularly set forth, has continued in effect, and now continues in effect for said Peoria exchange the rates and charges provided in said Rate Schedule "I. [fol. 8] P. U. C. 1," which rates do not yield a fair return on the fair value at the time of use of the property of the plaintiff used or useful in rendering intrastate telephone service to the subscribers and patrons of the plaintiff in said Peoria exchange, and are insufficient even to pay the cost of rendering telephone service to the subscribers and patrons of the plaintiff in said exchange, whereby plaintiff has suffered and continues to suffer great and irreparable loss, and its property is taken without due process of law, and it is denied the equal protection of the law, in violation of its rights under the Fourteenth Amendment to the Constitution of the United States.

Seventh

That at all the times herein mentioned said plaintiff and its predecessor in ownership of said Peoria exchange, said Central Union Telephone Company, have exercised in the management of said exchange all reasonable economies consistent with adequate and efficient service to its subscribers and patrons; that the net revenues derived by the plaintiff from the operations of said Peoria exchange left available for return, after the payment of operating expenses and taxes, $46,312.45 for the calendar year 1921; that for the following periods the revenues derived from said operations of said property have not been sufficient to pay said operating expenses and taxes, and have not paid any return on the said property of the plaintiff in said exchange, but have left deficits as follows:

For the calendar year 1922, $48,458 deficit.

For the calendar year 1923, $64,953 deficit.

That the plaintiff has been incurring monthly deficits from said operations in said exchange for the several past months of the year 1924, whereby the plaintiff has suffered and continues to suffer great [fol. 9] and irreparable loss and damage, and its property has been taken and continues to be taken without due process of law.

Eighth

That the Public Utilities Commission of Illinois in its said order of July 31, 1920, attached hereto as Exhibit "A," found and determined that the reasonable value of the property used and useful in furnishing telephone service in the Peoria exchange as of June 30, 1919, was $1,320,000; that the plaintiff and the Central Union Telephone Company, its predecessor in title, expended the sum of $1,617,533 in net additions to said property from July 1, 1919 up to and

including December 31, 1923; that the original cost to the plaintiff of said property is in excess of $3,000,000, and that the reproduction cost new of said property is at least the sum of $4,200,000, including working capital, materials and supplies, and going value; that the present fair value of said property is at least the sum of $3,800,000, including working capital, materials and supplies and going value.

Ninth

That the fair annual return which the plaintiff is entitled to earn under rates imposed upon it by public authority is an amount equal to not less than eight per cent of the fair value at the time of its use of its property used or useful in the rendition of its telephone service in the said Peoria exchange; that the revenues resulting from the operations of said property in the year ending March 31, 1924, were $322,000 less than an eight per cent return on the said minimum fair value of said property, and that the schedule of rates set forth in said I. P. U. C. No. 2 would yield additional revenue to the [fol. 10] plaintiff of not to exceed $190,000, which would leave for return on the said value of said property less than $172,000, or approximately four and one-half per cent return on said minimum fair value, and less than six per cent return on the cost of said property.

Tenth

That unless the defendants are restrained and enjoined as herein prayed, they will, as plaintiff believes and so alleges, attempt to compel the plaintiff to limit its rates and charges to the rates and charges provided in said Rate Schedule "I. P. U. C. 1," and to enforce the penalties prescribed by the laws of the State of Illinois, and plaintiff, its directors, officers, agents and employees will be deterred and prevented by the threat of said penalties from charging lawful rates in said Peoria exchange, and from charging any rates other than the rates prescribed by said Rate Schedule "I. P. U. C. 1," whereby plaintiff will be forced to submit to the confiscation of its property without due process of law, as aforesaid.

Unless the defendants are restrained and enjoined, as herein prayed, the plaintiff's subscribers in said Peoria exchange will, as plaintiff believes and so alleges, be induced and caused to resist and refuse payment of any rates other than those prescribed in said Rate Schedule "I. P. U. C. 1." The present number of plaintiff's subscribers in said Peoria exchange is more than 15,700, and the present average monthly bill rendered to them is less than $5.60. Because of the nature of the business of plaintiff, and the fact that the amounts due monthly from its subscribers for telephone service are generally small, it is impracticable for plaintiff to enforce collection thereof by actions of law. Plaintiff has no practical way to enforce collection [fol. 11] of its rates and charges except by cutting off and refusing service for default in payment of its bills rendered monthly therefor, and its subscribers will, as plaintiff believes and so alleges, institute

large numbers of suits in said Peoria exchange to restrain the plaintiff from cutting off and denying service for such non-payment of bills and for damages, and plaintiff will be thereby subjected to endless multiplicities of suits, and that the issues which would be presented in each such suit are presented and should and will be decided in this action.

That the plaintiff has no plain, speedy or adequate remedy at law.

Wherefore plaintiff prays:

First. That the rates prescribed in said Rate Schedule "I. P. U. C. 1" be declared to be in violation of the Constitution of the United States, and to be void;

Second. That the defendants and each of them, and all other persons, be temporarily and permanently restrained and enjoined from any attempt to compel the plaintiff, its officers, agents or employees, to observe or keep in force the rates and charges for telephone service prescribed in said Rate Schedule "I. P. U. C. 1;"

Third. That the defendants and each of them, and all other persons, be temporarily and permanently restrained and enjoined from taking any steps or proceedings against plaintiff, its officers, agents, or employees, to enforce any penalties, fines, forfeitures or any other remedy, either under any statute or otherwise, by reason of the charging and collecting by the plaintiff of higher rates and charges for telephone service in said Peoria exchange than in said Rate Schedule "I. P. U. C. 1" provided; and,

Fourth. That the plaintiff have such other and further relief as may be just and equitable in the premises.

[fols. 12 & 13] May it please your honors to grant unto the plaintiff a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said defendants, Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State of Illinois, and Edward J. Brundage, Attorney-General of the State of Illinois, commanding them and each of them on a day certain to be named therein and under a certain penalty to be and appear before this honorable court, then and there to answer, but not under oath, answer under oath being hereby expressly waived, all and singular the premises, and to perform and abide by such orders, direction or decree as may be made against them in the premises, and that pending the final hearing of this cause, a temporary restraining order and an interlocutory injunction may be issued as above prayed.

And the plaintiff will ever pray.

Illinois Bell Telephone Company, by Cutting, Moore & Sidley and Philip B. Warren, Its Solicitors. Philip B. Warren, William D. Bangs, of Counsel for Plaintiff.

Duly sworn to by F. O. Hale and Ben B. Boynton. Jurats omitted in printing.

[fol. 14] EXHIBIT A TO BILL OF COMPLAINT

Case No. 9311

IN RE APPLICATION OF CENTRAL UNION TELEPHONE COMPANY FOR INCREASE IN RATES AT PEORIA

Opinion and Order

On July 22, 1919, the Central Union Telephone Company filed a revised schedule of rates known as I. P. U. C. 1, covering telephone service in Peoria, and vicinity, which schedule it was proposed to make effective August 1, 1919. A hearing on the matter being deemed necessary, the Commission approved an order suspending the effective date until December 20, 1919. On November 28, 1919, the Commission approved an order authorizing the schedule to become effective temporarily until January 31, 1920, and subsequently approved supplemental orders temporarily extending the effective period of the proposed rates pending completion of the necessary investigation. The present rates and those for which final approval is asked, as to the principal classes of service, are as follows:

	Present	Annual rates proposed for final approval and temporarily in effect
Individual line business stations	$60.00	$72.00
Two-party line business stations	42.00	60.00
Four-party line business stations	30.00	.....
Individual line residence stations	36.00	39.00
Two-party line residence stations	24.00	30.00
Four-party line residence stations	18.00	27.00
Rural party line stations, business	24.00	33.00
Rural party line stations, residence	18.00	24.00

All interested parties having been duly notified, and due publication of notice of the filing of the revised schedule of rates with the Commis-[fol. 15] sion, having been made by the Central Union Telephone Company, the matter came on for hearing before the Commission on November 25, 1919, December 11, 1919, January 15, 1920, January 28, 1920, February 25, 1920, and May 18, 1920. At these hearings, the Central Union Telephone Company was represented by Ben B. Boynton, attorney, and the City of Peoria, by R. H. Radley, corporation counsel.

The Central Union Telephone Company introduced an inventory of the physical property appraised by three methods. One appraisal was based on mean average costs for labor and material for the period

from 1914 to 1918, inclusive; the second on prices introduced by Mr. Kempster B. Miller in a former case involving telephone rates in Peoria, Case No. 3043; and third on prices introduced by the Commission's engineers in the same proceeding. In each case the net additions to plant as shown by the company's books for the period from June 30, 1915, to June 30, 1919, were added at cost. The company also introduced statements of its operating revenues and expenses for the ten months' period ending October 31, 1919; an estimate of one year's operating income and expenses based upon actual operating results for the six months' period from July 1, 1919, to December 31, 1919; a statement of the classification and distribution of subscribers' stations as of September 30, 1919; traffic data covering inter-office trunking; a statement of the estimated annual increases in operating expenses resulting from increased wages and salaries made effective betwen July 1, 1919, and December 31, 1919, but not included in the statement of expenses for the year 1919; and proof of publication of notice of intention to apply for increased rates.

The City of Peoria introduced exhibits showing summary of appraisal of the property involved as of June 30, 1919; estimate of [fol. 16] assumed fair annual operating revenues and expenses based on operating results of the company for the year ending December 31, 1918; the order entered by the Commission in Case No. 3043 approved April 17, 1918; general traffic studies applied to inter-office trunking; and comparative studies of employees' wages in Peoria and other exchange systems.

The Commission introduced in evidence a report made by its accounting department covering operating revenues and expenses for the period January 1, 1918, to October 31, 1919; statement of wages paid by the Central Union Telephone Company at Peoria; comparative balance sheets; and report of service investigations made by the engineering department.

The record shows that for a number of years last past and up to midnight of July 31, 1918, the Central Union Telephone Company had in effect in Peoria a certain schedule of rates for telephone service and that on midnight July 31, 1918, its property and business, including Peoria, was taken over and managed thereafter by the United States Government, acting through the Postmaster General. The conduct of the company's affairs by the United States Government continued from July 31, 1918, to midnight July 31, 1919, at which time the property and business was returned to the Central Union Telephone Company under and pursuant to an Act of Congress approved July 11, 1919. The Government of the United States while operating the property, continued in effect the same schedule of rates as had been in effect, until June 11, 1919, at which time a schedule of increased rates for telephone service at Peoria was placed in effect.

This schedule of rates was authorized and approved by the Postmaster General prior to June 6, 1919. The Act of Congress approved [fol. 17] July 11, 1919, under which the property was returned to the

company provided that existing toll and exchange telephone rates if established or approved by the Postmaster General on or prior to June 6, 1919, should continue in force for a period of four months after the Act took effect, unless sooner modified by authorities having jurisdiction over them.

On July 22, 1919, the Central Union Telephone Company in its own name and as a public utility, filed its schedule of increased rates known as I. P. U. C. 1, covering telephone service in Peoria, and vicinity, which schedule of rates contains the same rates as were approved by the Postmaster General prior to June 6, 1919, and placed in effect by the Postmaster General June 11, 1919.

In a former case, Docket No. 3043, involving the rates of the Central Union Telephone Company at Peoria, and vicinity, this Commission found the fair value of the Peoria exchange property, based on inventories and appraisals of such property as it existed on June 30, 1915, to be $1,100,000. All of the appraisals introduced in evidence in Case No. 3043, were based on an inventory made on the Peoria exchange property as it existed on June 30, 1915, and the record shows that this inventory was made a part of the record by stipulation between the company and the city of Peoria.

The reproduction cost new of the property as introduced by the Central Union Telephone Company, using mean average prices for labor and material for the period 1914 to 1918, plus the net additions to plant for the period from June 30, 1915, to June 30, 1919, at cost is $1,752,133, and the present condition cost, on the same basis is $1,517,842. The estimated cost of establishing the business attached to the Peoria exchange is given as $403,633 and the amount or working capital allocable to the Peoria exchange is $38,-[fol. 18] 423. The total reproduction cost new of the Peoria exchange property as of June 30, 1919, on this basis, therefore, is $2,491,278 and the total present condition cost is $2,246,987.

The reproduction cost new of the physical property, based upon the inventory introduced, using the same unit prices as were used by Mr. Kempster B. Miller in Case No. 3043, and including net additions to plant at cost, from June 30, 1915, to June 30, 1919, with the working capital and estimated cost of establishing business is $1,975,828, and the present condition cost is $1,794,572. The fair value submitted by the Central Union Telephone Company, using the value as previously fixed by the Commission in Case No. 3043, plus net additions to plant for the period from June 30, 1915, to June 30, 1919, is $1,387,089.

The Central Union Telephone Company contended that the value of the property used and useful in furnishing telephone service at Peoria, and vicinity, has increased since the finding of the Commission in Case No. 3043 and that the company is entitled to the benefit of that increase in value. The city contended that the order entered in Case No. 3043, less deductions due to accrued depreciation, is binding on the parties as to the matters therein decided, and that the only increase that can be added to the value of the property as determined by the Commission in Case No. 3043 is the depreciated

cost of the net additions made to the property since the fixing of said value. The various elements entering into the value of the property were exhaustively considered by the Commission in making the final determination as to the value of the property devoted to furnishing telephone service in Peoria in the previous case involving telephone rates at Peoria. Original costs, costs to reproduce, and normal average costs were fully considered. All elements of [fol. 19] value both tangible and intangible were included in the total fixed by the Commission and the Commission is of the opinion, and finds, that, for the purposes of this case, the value as determined in Case No. 3043 is a proper valuation insofar as it represents property involved in the present proceeding.

It appears, however, that the Commission in fixing a value for the property in the previous Case No. 3043 allowed the sum of $46,543 to be included for net additions to plant from June 30, 1915, the date of the inventory used, to June 30, 1917.

In the instant case the net additions to plant from June 30, 1917, to June 30, 1919, have been shown, in the record, to amount to $287,089. Since the net additions to plant from June 30, 1915, to June 30, 1917, amounting to $46,543, were included in the total valuation fixed by the Commission in Case No. 3043, only net additions from June 30, 1917, to June 30, 1919, may properly be included in any valuation to be made herein.

On this basis, net additions amounting to $240,546 at cost, less accrued depreciation, of $24,055, leaves $216,491 which may be included as a part of the present Peoria property.

As a result of careful consideration of the record in this case, the Commission is of the opinion, and finds, that for the purposes of this case the fair value of the property of the Central Union Telephone Company at Peoria as of June 30, 1919, should be determined on the basis of the valuation as made in Case No. 3043, plus the net additions from June 30, 1917, to June 30, 1919, depreciated.

In connection with the service investigations made by the engineering department of the Commission, the Commission's engineers determined the physical condition of the plant by inspection. Based [fol. 20] upon such inspection and a careful consideration of normal life tables, the value of the average annual depreciation now occurring in the physical portion of the plant is estimated to be $88,200, which estimate the Commission finds to be reasonable.

In Case No. 3043, the Commission held that a reasonable rental to be paid the American Telephone and Telegraph Company by the Central Union Telephone Company on transmitters, receivers, and induction coils, should be 55 cents per instrument, per annum. The Central Union Telephone Company contended that this allowance should be increased because of the increased cost of the parts in question, but did not introduce evidence to support this claim for an increased allowance. In the previous case involving telephone rates in Peoria, the Commission gave very careful consideration to this item of expense. The record in the instant case does not contain evidence in support of any increase except evidence of the most general character as to the increased cost of the equipment furnished by

the parent company. It appears, therefore, in the absence of evidence to the contrary, and the Commission finds, that the allowance as fixed in the previous case to cover the rental of transmitters, receivers and induction coils is reasonable and that the operating expenses as shown should be adjusted accordingly.

The City of Peoria introduced exhibits tending to show that the traffic expense in connection with the operation of the telephone system at Peoria is excessive due to the fact that another type of switching equipment had not been intsalled. The Central Union Telephone Company introduced exhibits and testimony showing that the present trunking between exchanges is necessary, but that it might be theoretically possible to reduce trunking expense in the [fol. 21] main exchange by the installation of other equipment. The possible estimated annual reduction in traffic expense, using present wages paid by the Central Union Telephone Company, due to the adoption of this expedient, is conceded to be $9,273. The telephone company, however, contends that its present trunking arrangements are the best that could be made under the conditions confronting it, and it objects to any deductions being made from its actual operating expenses incurred for trunking.

For the purpose of this case, it is not necessary to decide whether this deduction should be made, as the rates under consideration are shown to be reasonable, whether the operating expenses are so reduced or not. Therefore, the Commission will not at this time pass upon the question of whether the operating expenses should be so reduced.

If the operating expenses were adjusted in accordance with the city's contention the estimated annual operating expenses for the year ending December 31, 1919, based upon the actual operating results under the proposed rates and including an allowance to provide an adequate reserve for depreciation as above set forth, and also including taxes and other deductions from net income, would be $498,193. The annual operating revenue for the year ending December 31, 1919, based upon revenues for the six months' from July 1, 1919, to December 31, 1919, during which time the proposed rates have been in effect, and including that portion of toll revenue property allocable to the Peoria local exchange system, was $596,695. The net income available for return, after giving due consideration to rent deductions, amortization, and non-operating revenues, would be $95,226.

The Central Union Telephone Company introduced exhibits and supported the exhibits with testimony in which it was shown that [fol. 22] annual increases in salaries and wages made during the period from July 1, 1919, to December 31, 1919, but not included in the estimated operating expenses for the year ending December 31, 1919, amount to $25,503. When this necessary increased operating expense is taken into account, the amount available for return would be $69,723, which is equal to an annual return of 5.2 per cent upon the estimated fair value of the property.

After carefully considering the evidence, the Commission is of the opinion, and finds:

(1) That for the purposes of this case, a reasonable value of the property used and useful in furnishing telephone service in Peoria, County of Peoria, and vicinity, and the business attached thereto, including every element of value, tangible and intangible, as of June 30, 1919, is $1,320,000;

(2) That a reasonable monthly allowance as an item of operating expense to provide an adequate reserve for depreciation is $7,360, plus 6 per cent of the cost of all annual additions that may be made to the plant in the future;

(3) That the schedule of rates known as I. P. U. C. 1, of the Central Union Telephone Company applying to Peoria, and vicinity, is just and reasonable, and should be approved.

It is, therefore, ordered by the Public Utilities Commission, of Illinois, as follows:

Section 1. That the Central Union Telephone Company be, and the same is hereby, permitted and authorized to place in effect the schedule of rates on file with the Commission, designated as I. P. U. C. 1, covering telephone service in the City of Peoria, and vicinity, effective August 1, 1920, provided written notice of the effective [fol. 23] date the said schedule of rates is filed with the Commission not later than August 1, 1920; or effective at any subsequent date, provided written notice of the effective date of the said schedule of rates is filed with the commission not less than ten days prior thereof; and when notice of the effective date of the said schedule of rates is filed with the Commission, as specified herein, and the said schedule of rates is posted or filed in the office of the public utility, all as required by the Public Utilities Act of Illinois and General Order No. 28, adopted by the Commission, the said schedule of rates shall be the legal rates covering telephone service in the City of Peoria and vicinity.

Section 2. That the Central Union Telephone Company set aside a monthly allowance of $7,350 to provide a reserve against depreciation, plus 6 per cent per annum of the cost of all annual additions that may be made to the plant located at Peoria, Illinois, in the future.

Section 3. That all items of expense having to do with the upkeep of the plant except those specifically designated in Section 11, Uniform System of Accounts for Telephone Companies, issued by the Commission, shall be charged to Account 115, Depreciation of Plant and Equipment.

By order of the Commission, at Springfield, Illinois, this thirty-first day of July, 1920.

[fol. 24] EXHIBIT B TO BILL OF COMPLAINT

STATE OF ILLINOIS:

ILLINOIS COMMERCE COMMISSION

10426

In the Matter of the Proposed Advance in Rates for Telephone Service Furnished in Peoria, Averyville, Bartonville, East Peoria, and Peoria Heights and Vicinity, Stated in Rate Schedule I. P. U. 2 of THE CENTRAL UNION TELEPHONE COMPANY, now THE ILLINOIS BELL TELEPHONE COMPANY.

Permanent Suspension Order

By the Commission:

On March 31, 1920, the Central Union Telephone Company, now the Illinois Bell Telephone Company, filed Rate Schedules I. P. U. C. 2 in which it was proposed to advance the rates for telephone service in Peoria, Averyville, Bartonville, East Peoria and Peoria Heights, and vicinity. The proposed rates were suspended from time to time pending investigation.

Hearings were held in this matter and some evidence adduced which among other things includes data covering the cost of operation during the early part of the year 1920, but the investigation of this matter has not been completed. Since the filing of the proposed rates there has been a marked decline in the prices of labor and materials entering into the cost of rendering telephone service. Under these conditions it would be unfair at this time to fix rates for the future. It would not be fair to the petitioner nor to the patrons of the petitioner to attempt to fix rates under conditions and upon [fol. 25] the cost of operation that prevailed in the early part of the year 1920, when such conditions and costs do not now prevail.

The Commission therefore finds that Rate Schedules I. P. U. C. 2 of the Central Union Telephone Company, now the Illinois Bell Telephone Company, covering rates for telephone service in Peoria, Averyville, Bartonville, East Peoria, Peoria Heights and vicinity, should be permanently suspended.

It is therefore ordered that Rate Schedules I. P. U. C. 2 of the Central Union Telephone Company, now the Illinois Bell Telephone Company, covering rates for telephone service in Peoria, Averyville, Bartonville, East Peoria, Peoria Heights and vicinity be, and the same are hereby, permanently suspended, annulled and cancelled.

By order of the Commission at Springfield, Illinois, this 31st day of October, 1921.

(Signed) Julius Johnson, Secretary

[fol. 26] EXHIBIT C TO BILL OF COMPLAINT

STATE OF ILLINOIS:

BEFORE THE ILLINOIS COMMERCE COMMISSION

10426

[Title omitted]

The Illinois Bell Telephone Company having filed its schedule of rates herein on April 1, 1920, and the above case having been heard by this Commission during November and December, 1920, and the permanent suspension order entered by said Commission on October 31, 1921, having been reversed by the Circuit Court of Peoria County, and the case having been thereafter heard by this honorable Commission on June 6 and July 7, 1922, said Illinois Bell Telephone Company requests a prompt decision by said Commission and moves that pending the entry of a final order herein, a temporary schedule of rates be made effective on less than thirty days' notice, to prevent the further confiscation of the property of said Illinois Bell Telephone Company in Peoria, which is contrary to the Constitution of the State of Illinois and the United States of America.

Dated September 14, 1922.

Illinois Bell Telephone Company, by (Signed) Cutting, Moore & Sidley, Its Attorneys. (Signed) Wm. D. Bangs, Counsel.

[fol. 27] EXHIBIT D TO BILL OF COMPLAINT

STATE OF ILLINOIS:

ILLINOIS COMMERCE COMMISSION

[Title omitted]

Introductory Order

By the Commission:

The Illinois Bell Telephone Company having filed with this Commission on September 16, 1922, its request and motion for a temporary order approving a temporary schedule of rates on less than thirty days' notice; and it appearing to the Commission that the hearing and taking of evidence in the above entitled cause is very rapidly nearing a close and should, if carried forward with diligence and energy, be completed within a few months; and it being a matter of common knowledge that a change of rates in a large community at short intervals of time is more or less disconcerting to the service rendered by a utility and tends to destroy the public relations with the utility in the community served;

Therefore the Commission is of the opinion and finds that the request and motion of the Illinois Bell Telephone Company of September 16, 1922, for a temporary order establishing a temporary rate on less than thirty days' notice, should be denied without prejudice.

It is therefore ordered that the request and motion of the Illinois Bell Telephone Company of September 16, 1922, for a temporary [fol. 28] order establishing a temporary rate on less than thirty days' notice be, and the same is hereby, denied without prejudice.

By order of the Commission at Springfield, Illinois, this 28th day of September, 1922.

(Signed) Julius Johnson, Secretary. (Seal.)

[fol. 29] EXHIBIT "E" TO BILL OF COMPLAINT

Illinois Bell Telephone Company, 212 West Washington Street, Chicago

July 5, 1923.

Illinois Commerce Commission, Springfield, Ill.

GENTLEMEN:

Peoria Rate Case, No. 10426

The last hearing in the above case was held on September 28, 1922, and then continued, pending the preparation of reports by the Commission's accountants and engineers.

The Company's most recent statements of the operation of the Peoria exchange show that the revenues are failing to meet the operating expenses by approximately $4,000 a month.

We respectfully request that this case be set for hearing at as early a date as possible.

Yours very truly,

(Signed) W. D. Bangs, General Counsel.

[fol. 30] **Affidavits.**

AFFIDAVIT OF ALBERT P. ALLEN ON REVENUES UNDER RATE SCHEDULE I. P. U. C. No. 2

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

ALBERT P. ALLEN, being duly sworn, on oath deposes and says:

That he is commercial engineer of the plaintiff, Illinois Bell Telephone Company, and resides in Chicago, Illinois; that he graduated from the Worcester Polytechnic Institute in the year 1889 with

a degree of Bachelor of Science in mechanical engineering and in the year 1890 with a degree of Bachelor of Science in electrical engineering.

That he was employed by the American Telephone and Telegraph Company from August, 1890, to June, 1903, during which time he occupied the positions of district inspector, Chicago, Illinois; district inspector, Boston, Massachusetts; general inspector in charge of Long Lines Equipment, headquarters in New York; that he was traffic engineer of the Central Telephone Company from June, 1903, to June, 1911; that he was traffic engineer of the central group operating in the States of Illinois, Michigan, Wisconsin, Ohio and Indiana from June, 1911, to January, 1914, when he was transferred to the Chicago Telephone Company) now Illinois Bell Telephone Company) as commercial engineer, which position he now [fol. 31] occupies. That while commercial engineer he had and has charge and supervision of the making of schedules of rates for the plaintiff and the preparation of studies in relation thereto, making of the estimates of revenues resulting from rates in effect or proposed, and the study of the effect of changes of rates on the revenues of the company.

That he is familiar with all rates and charges which are made by the plaintiff for the telephone service and facilities furnished by it and with the schedules of such rates which are now and have been from time to time filed by the plaintiff with the Illinois Commerce Commission and its predecessor, the Illinois Public Utilities Commission, and that he has carefully examined Rate Schedules I. P. U. C. No. 1 and I. P. U. C. No. 2 filed with the Illinois Public Utilities Commission, covering the rates for telephone exchange service in the territory known as the Peoria exchange, which said territory includes the City of Peoria, and Villages of Averyville, Bartonville, East Peoria and vicinity, in the State of Illinois.

That this affiant has prepared a table showing the rates filed in said Rate Schedule I. P. U. C. No. 1 and I. P. U. C. No. 2 and indicating all differences in the rates in said respective schedules, classified as to the rates for the respective classes of service, which said table is as follows:

[fol. 32] Illinois Bell Telephone Company, Peoria, Illinois, Exchange

Class of service	Monthly rate	
	I. P. U. C. No. 1	I. P. U. C. No. 2
Business:		
Individual	$6.00	$8.00
Two Party	5.00	6.75
Four Party	2.50	....
Extension	1.00	1.25

Class of service	Monthly rate I. P. U. C. No. 1	Monthly rate I. P. U. C. No. 2
Residence:		
Individual	3.25	4.00
Two Party	2.50	3.25
Four Party	2.25	2.50
Extension	.50	.75
Rural:		
Business	2.75	4.00
Residence	2.00	2.50
Private Branch Exchange, Flat Rate:		
Cord Board (Hotel)	2.75	4.00
(Others)	3.00	4.00
Cordless Board	2.50	2.50
Trunks	8.00	10.50
Stations (Hotel)	.41⅔	.60
(Others)	1.00	1.25
Private Branch Exchange—Measured Rate:		
Cord Switchboard—1 position non-multiple* switchboard, not exceeding 30 jacks, and operator's set	....	4.00
Additional Switchboard Positions, each	....	2.50
Additional Jacks, per strip of 10	....	.75
Cordless Board and Operator's Set (capacity 3 trunks and 7 stations)	....	2.50
Stations on same premises, each	....	.75
One Trunk and 200 or less messages	....	8.50
Additional Trunks, each	....	2.50
Additional Messages, each	....	.03
Power Generator Line, each ¼ mile or fraction	....	.83
Cord Switchboards will be furnished only to subscribers contracting for at least 2 trunks and 400 messages per month.		

* Multiple switchboard will be furnished when desired at a monthly rental based on the cost of switchboard, with associated wiring and apparatus installed.

Class of service	Monthly rate I. P. U. C. No. 1	Monthly rate I. P. U. C. No. 2
Intercommunicating System—Flat Rate:		
In addition to rates for trunk and stations (minimum equipment 1 trunk and 4 stations)	.50	
Switching Devices, each (in addition to station rate)	....	.75
Trunks, Intercommunicating Residence, each	3.25	4.00
Intercommunicating System—Measured Rate:		
Switching Devices, each (in addition to station rate)	Not quoted	.75
Joint User	1.50	2.75
Additional Jack Strips	.50	.75
Power Generation Units	....	.83
Extra Mileage Units:		
P. B. X.	.60	.75
Individual	.60	.75
Two Party	.40	.50
Four Party	.25	.50

[fol. 33] That this affiant has made a careful and detailed estimate as to the effect on the revenues of the plaintiff in the event that the rates prescribed by said Schedule I. P. U. C. 2 should become effective, said estimate being based upon the judgment and experience of the plaintiff, as aforesaid, and his opinion, based upon said judgment and experience, of the effect of the said change in rates on the Company's subscribers in said exchange who will, as shown by the actual experience of the Company, make changes in their class of service as a result of the increase of rates in said Schedule I. P. U. C. No. 2, and it is the opinion of this affiant that said Schedule of Rates I. P. U. C. No. 2 would cause an increase in the total annual revenue of the plaintiff in said Peoria exchange of not to exceed $190,000 per annum, which said opinion is based upon all the matters aforesaid.

(Signed) Albert P. Allen

Subscribed and sworn to before me this 17th day of June, A. D. 1924. (Signed) E. D. Meyers, Notary Public for the County and State aforesaid. (Seal.)

[fol. 34] AFFIDAVIT OF ARTHUR PERROW ON REVENUES AND EXPENSES

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

Arthur Perrow, being first duly sworn on oath, deposes and says: He is Chief Accountant of the plaintiff company and has been engaged for sixteen years in accounting work for Bell System Telephone Companies.

That the records, books and accounts of the plaintiff are and have been since January 1, 1913, kept in accordance with the Uniform System of Accounts, as prescribed by the Interstate Commerce Commission under an Act of Congress, which was adopted in identical form by the State Public Utilities Commission of Illinois on July 1, 1914, and continued in effect by the Illinois Commerce Commission law effective July 1, 1921, as the Uniform System of Accounts for Classes A and B Telephone Companies in Illinois.

That the affiant is thoroughly familiar with the records, books and accounts of the plaintiff showing the results of the operations of the plaintiff in the territory of the plaintiff known as the Peoria exchange, and that the statements hereinafter made by this affiant are founded upon said records, books and accounts; that the revenues and expenses (other than interest charges) resulting from the operations of the Company in the Peoria exchange, are as follows for the periods stated:

[fol. 35] Peoria, Illinois, Exchange Income Statement

	Year 1921	Year 1922	Year 1923	Apr. 1, 1923, to Mar. 31, 1924
Exchange Revenues	$615,329.82	$645,608.49	$683,629.27	$697,395.13
Toll Revenues	63,252.55	73,587.23	77,637.14	76,623.19
Miscellaneous Operating Revenues	15,191.06	12,919.56	21,204.06	22,966.38
Non-Operating Revenues	287.87	143.12	431.52	286.64
Gross Revenues..	$694,061.30	$732,258.40	$782,901.99	$797,271.34
Less: Licensee Revenue—Dr.	30,361.26	32,157.31	34,061.39	34,627.62
Total Revenues..	$663,700.04	$700,101.09	$748,840.60	$762,643.72
Current Maintenance ...	110,009.12	154,299.72	157,119.30	143,854.92
Depreciation of Plant and Equipment	99,156.62	112,965.22	176,013.86	184,323.11
Traffic Expenses.....	266,187.90	316,233.97	303,164.58	274,730.13
Commercial Expenses ..	65,713.59	79,745.96	81,052.49	83,073.10
General and Miscellaneous Expenses	20,415.75	25,960.62	25,941.39	21,678.96
Taxes	53,536.93	55,988.54	67,791.87	70,051.75
Other Expenses and Deductions	2,367.68	3,452.76	2,710.16	2,846.04
Total Expenses....	$617,387.59	$748,646.79	$813,793.65	$780,558.01
Balance Available for Return	$46,312.45	$48,545.70 Deficit	$64,953.05 Deficit	$17,914.29 Deficit

That the cost of the physical property used and useful in rendering telephone service in said Peoria exchange on December 31, 1923, was $3,187,106. That the net additions to said property from July 1, 1919, to December 31, 1923, amounted to $1,617,533.

That, based on his knowledge of the operations of the plaintiff in said exchange, it is the opinion and judgment of this affiant that the amount reasonably required for working cash capital for said property is not less than $73,000.

(Signed) Arthur Perrow.

Subscribed and sworn to before me this 17th day of June, A. D. 1924. (Signed) E. D. Meyers, Notary Public for the County and State Aforesaid. (Seal.)

[fol. 36] AFFIDAVIT OF JOHN R. TURNER, ON VALUATION

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

John T. Turner, being duly sworn, on oath deposes and says:

That he resides in Glen Ellyn, Illinois, and that he is Appraisal Engineer for the Illinois Bell Telephone Company; that he has had over fifteen years' experience in the telephone business; that during the first three years of his association with the Bell System, he was employed by the Chesapeake and Potomac Telephone Company and the New York and New Jersey Telephone Company.

That he entered the employ of the Chicago Telephone Company, now the Illinois Bell Telephone Company, in the early part of February, 1912, engaging in the engineering of outside telephone plant and continuing this work up to his entering the army in July, 1917, at which time he was Central Division Engineer for the City of Chicago, having charge of the engineering of a very large and important section of the City including the principal business section.

That, during his service in the army, he was a Major in the Signal Corps, and as such had further experience through supervising the construction of telephone and telegraph plant, while in this country and abroad.

That on returning to Chicago early in 1919, after being honorably discharged from the army, he entered the employ of the Chief [fol. 37] Engineer's Department of the central group of Bell Telephone Companies, consisting of the Chicago Telephone Company, the Wisconsin Telephone Company, the Michigan State Telephone Company, and the Cleveland Telephone Company; that during his connection with these companies, he engaged in valuation and cost work for Illinois, Wisconsin, Michigan, and Indiana, gaining a familiarity with the plants and equipments of the several companies, and acquiring a knowledge of their costs.

That in 1920, at the time of the dissolution of the central group of Bell Telephone Companies, he was transferred to the Chief Engineer's office of the Chicago Telephone Company, now the Illinois Bell Telephone Company, with which department he is still connected, having charge of all inventories and appraisals of the company's property.

That this affiant is thoroughly familiar with the records of the Company showing the costs of labor and material from the year 1915 to the date hereof; that during the last few years he has appraised over $200,000,000 of telephone property in the State of Illinois and elsewhere, and has testified in numerous cases before the Illinois Commerce Commission as to the reproduction cost new and the reproduction cost new less depreciation of the plaintiff's properties.

That he has carefully examined an inventory and appraisal of the property used and useful in the Peoria exchange made as of June 30, 1915, which this affiant is informed and believes to be the appraisal relied upon by the Public Utilities Commission of the State of Illinois in entering its order attached to the bill of complaint herein as Exhibit "A," and has caused to be compiled from the books and records of the plaintiff, the gross additions to and [fol. 38] displacements from said property from July 1, 1915, to September 30, 1923, and has determined from the records of the plaintiff the percentages of increase or decrease of the material and labor costs of said gross additions, and displacements for said period, and has thereby determined the reproduction cost new as of September 30, 1923, of the total plant in service of said plaintiff used and useful in rendering telephone exchange service in said Peoria exchange; that said reproduction cost new is at least $3,200,000, not including general equipment or working capital, or any general over-head charges, and not including the going value of said property.

Affiant further says that in appraising property of any kind, there are two general elements to be considered: first, those costs which are directly assignable to a specific thing, such as the cost of a pole or a switchboard; and, second, those costs which are of a general character applied to the plant as a whole, usually designated as over-head costs. That this affiant is familiar with the cost of telephone construction work, both as to the specific items and as to the over-head items mentioned above, and that after giving careful consideration to all of the facts, including the character of the property and the manner in which it was built, it has been determined by this affiant that an additional amount of at least fifteen per cent of the cost of land, buildings and plant should be added for over-head costs to the amounts heretofore stated.

That this affiant has made a determination of the going value of the Company's property and business in said exchange; that there is a difference in value of the completed physical property and the value of that property with its present business established [fol. 39] operating with a trained and efficient organization, and that in the opinion of this affiant, the going value of said property

at the date hereof is at least $380,718. That this going value of the property has been determined with consideration of the financial history of the Peoria exchange, but is not in any way based on the past losses of the plaintiff in operating said exchange, or the value of any of the plaintiff's franchises.

That this affiant is familiar with and has accepted the affidavit of Mr. Perrow as to the cash working capital, and has determined the general equipment and supplies used and useful in the conduct of the plaintiff's business in said exchange.

That this affiant is familiar with the property of the plaintiff in the Peoria exchange, and has from time to time made special inspections with a view to observing the condition of said property and the parts thereof; that he is familiar with the condition of said property as to the physical deterioration thereof. That based upon his knowledge of said property, deponent states that the said property in service used and useful in rendering service in the Peoria exchange is in at least 91 per cent condition.

That this affiant is familiar with the original cost of the property, the value thereof as fixed and determined by the Public Utilities Commission in its order attached to the bill of complaint herein as Exhibit "A," and the appraisal used in said order, and the net additions to said property since the date of said order, and the course of prices of labor and materials used in telephone construction.

That after giving careful consideration to the foregoing facts and matters, and to the plaintiff's property, its history, location and [fol. 40] character, and to all other facts in affiant's knowledge affecting its value, it is the opinion of the affiant that the present fair value of the entire property of the plaintiff used and useful and exclusively devoted by it to the furnishing of telephone exchange service in the Peoria exchange is not less than $3,800,000, and that the detail of the reproduction cost of said property is shown in the following table:

Peoria Exchange

Reproduction Cost of Property

		Reproduction costs.	
		New	New less depreciation
Exchange plant, Oct. 1, 1923		$3,268,225	$2,985,980
General Overheads:			
Omissions and contingencies, Engineering, Administration and legal, Taxes, insurance and interest during construction	15%	490,234	447,897
Exchange Plant, Oct. 1, 1923		$3,758,459	$3,433,877
General Equipment		49,026	37,707
Exchange Physical Property, Oct. 1, 1923		$3,807,485	$3,471,584
Working Capital—Cash		73,000	73,000
—Supplies		37,894	36,255
Going Value (10%)		380,748	380,748
Total Exchange Property, Oct. 1, 1923		$4,299,127	$3,961,587
Net Additions, Oct. 1, 1923, to Apr. 30, 1924		27,517	27,517
Total Exchange Property, May 1, 1924		4,326,644	3,989,104

And further affiant sayeth not.

(Signed) John R. Turner.

Subscribed and sworn to before me this 17th day of June, A. D. 1924. (Signed) E. D. Meyers, Notary Public for the County and State Aforesaid. (Seal.)

[fol. 41] Affidavit of U. F. Cleveland on Revenues & Expenses

United States of America,
State of Illinois,
County of Cook, ss:

U. F. Cleveland, being duly sworn, on oath says:

That he resides in Chicago, Illinois. That he was first employed by the Chicago Telephone Company in the year 1892, in its ac-

counting department, and excepting for a period of about eleven months during 1909 and 1910, he has been continuously employed by said company in accounting work. That since July 1, 1920, he has been the chief accounting officer of the company with the title of General Auditor, and has complete charge of all of the company's books, records and accounts and is thoroughly familiar with them.

That this affiant has read and is familiar with the affidavit of Mr. Perrow filed in this cause, and the statements of revenues and expenses of the plaintiff derived from operations of said Peoria exchange, as set forth in said affidavit and believes said statements to be true and correct; that in said statements there are credited as revenues derived from operations within said exchange all receipts from messages between points within said exchange and a proportion of the receipts from messages between points within said exchange and points without. That the basis used in establishing said proportion is the usual and customary basis of settlement for telephone service interchanged between the plaintiff and approximately six hundred independent telephone companies with [fol. 42] which it has connections in the State of Illinois, which basis was established under the approval of the Illinois Public Utilities Commission; that included in such proportion there is a proportion of the receipts from interstate telephone messages, which proportion is not less in amount per message than the proportion of receipts from intrastate messages; that this affiant is of the opinion, from his knowledge and experience in telephone accounting and an examination of the records of the plaintiff's operations in said Peoria exchange, that the inclusion in the income statements set forth in said Perrow's affidavit of the interstate operations of the plaintiff in said exchange (which cover approximately five per cent of the total toll operations of the plaintiff therein), does not materially affect the results shown by said statements.

(Signed) U. F. Cleveland.

Subscribed and sworn to before me this 17th day of June, A. D. 1924. (Signed) E. D. Meyers, Notary Public for the County and State Aforesaid. (Seal.)

[fol. 43] AFFIDAVIT OF B. C. LINGLE ON RATE OF RETURN

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

B. C. Lingle, being first duly sworn, on oath says that he resides at Chicago, Illinois; that he is an investment banker and is Vice President of the Harris Trust and Savings Bank, which is engaged in an investment business; that he has been continuously employed for twelve years in passing on investments made by said bank and the

purchase of securities by it; that said bank is one of the largest houses in the United States handling public utility securities, it and its predecessor having been in business for over forty years.

That the cost of borrowed money to public utilities on first mortgage of the companies' properties is approximately six per cent; for example, the first mortgage five per cent bonds of the plaintiff issued in July, 1923, in the amount of Fifty Million Dollars ($50,000,00) cost the Company approximately 5.6 per cent, including amortization and discount.

That the prudent financing of a corporation such as the plaintiff requires that at least fifty per cent of its capital requirements should be raised by the sale of stock thereby creating an equity in the property. That it is fundamental that public utilities such as the plaintiff, which expect to continue permanently in business and which are continuously called upon to increase their investments in order [fols. 44 & 45] to meet the requirements imposed upon them, must be able to pay a fair dividend on their stocks and earn a reasonable surplus over such dividend so as to give assurance to investors of the reasonable continuance of the dividend.

That there is active competition among public utilities for new funds and the plaintiff is compelled to meet this competition and to offer investors inducements equal to those offered by others, and that investors must have reasonable assurance of the integrity of the investment and the safety of their money.

That in the opinion of this affiant, a public utility such as the plaintiff, in order to have a ready market for its stock, and obtain par therefor, should earn and pay a dividend of at least eight per cent thereon, and earn a surplus of from two to three per cent over said dividend.

(Signed) B. C. Lingle

Subscribed and sworn to before me this 17th day of June, A. D. 1924. (Signed) Glenn O. Hoffnines, Notary Public for the County and State Aforesaid. (Seal.)

[File endorsement omitted.]

[fol. 46] IN UNITED STATES DISTRICT COURT

[Title omitted]

TEMPORARY RESTRAINING ORDER—Filed June 18, 1924

This day came the plaintiff, Illinois Bell Telephone Company, by Philip B. Warren, its solicitor, and moved the Court for a temporary restraining order, in accordance with the prayer of its bill of complaint filed herein, and in support of its said motion plaintiff tendered to the Court certain affidavits filed herein.

And the Court having heard counsel for the plaintiff in support of its motion, and having read said bill and affidavits, and it appearing

to the Court that the telephone rates prescribed by the order of the Public Utilities Commission of Illinois, complained of in the said bill of complaint and therein referred to as I. P. U. C. No. 1, have confiscated and if further enforced will continue to confiscate the property of the plaintiff, and have caused and if further enforced will continue to cause the plaintiff great and irreparable and continuing injury.

It is therefore ordered and decreed that the defendants Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State of Illinois and Edward J. Brundage, Attorney General of the State of Illinois, be, and they are hereby severally enjoined and restrained until the further order of the Court, from attempting to compel the plaintiff its officers, agents or employees to observe or enforce the rates for telephone service set forth in said bill of complaint and [fol. 47 & 48] therein specifically referred to as I. P. U. C. No. 1, and that the defendants and all other persons be, and they are hereby, enjoined until the further order of the Court, from taking any steps or proceedings against the plaintiff, its officers, agents or employees to enforce any penalties or any other remedy against the plaintiff for disregarding said rates.

This order shall not take effect until the plaintiff shall enter into its bond or undertaking in the sum of One Hundred Thousand Dollars ($100,000) conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained hereby, and further conditioned so that in the event that an interlocutory injunction as prayed for in the said bill of complaint shall not be awarded to the plaintiff upon or before the expiration of this order, the plaintiff shall refund to its several subscribers affected hereby, either in cash or by credit upon subsequent bills, any sums paid by them in the meantime in excess of the sums chargeable to them pursuant to the said order of said Commission hereinabove referred to, the enforcement of which is hereby temporarily restrained and enjoined.

And it is further ordered that the plaintiff is hereby authorized during the time this order is in effect, to increase its rates and charges for telephone exchange service in the territory of the plaintiff known as the Peoria exchange, as set forth in said bill of complaint, but not in excess of the rates and charges set forth in I. P. U. C. No. 2, specifically referred to in said bill of complaint.

June 18, 1924, 12:30 P. M.

Louis FitzHenry, District Judge.

[File endorsement omitted.]

[fols. 49 & 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed July 30, 1924

And now come the above named defendants, by Edward J. Brundage, Attorney General of the State of Illinois, and Shelton F. McGrath and R. H. Radley, special assistants Attorney General, their attorneys, and move the Court to dismiss the bill of complaint filed herein for want of equity, and to grant such other and further relief in the premises as may be just.

Edward J. Brundage, Attorney General of the State of Illinois, and Shelton F. McGrath, R. H. Radley, Special Assistants Attorney General, Attorneys for said Defendants.

[File endorsement omitted.]

[fol. 51] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERLOCUTORY INJUNCTION—Filed July 30, 1924

This matter coming on to be heard by the statutory Court consisting of George T. Page, Circuit Judge, Louis FitzHenry, District Judge, and Walter C. Lindley, District Judge, on motion of Plaintiff for an interlocutory injunction, and a full hearing having been had in open Court upon the bill and affidavits in support thereof.

The Court finds that the rates in force under the order of the Illinois Commerce Commission known as I. P. U. C. No. 1 are confiscatory and that the interlocutory order should be allowed, and is hereby allowed;

It is therefore ordered by the Court that the defendants Frank L. Smith, Cicero J. Lindly, Hal. W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State of Illinois, and Edward J. Brundage, Attorney General of the State of Illinois, be, and they are hereby severally enjoined and restrained, pending the determination of this cause and until the further order of this Court, from attempting to compel plaintiff, its officers, agents or employees, to observe or put in force the rates for telephone service set forth in the bill of Complaint filed herein and therein specifically referred to as I. P. U. C. No. 1, and that the defendants and all other persons be and they are hereby restrained and enjoined until the further order of this Court from taking any steps or proceedings against the plaintiff, its officers, agents or employees, to

[fols. 52 & 53] enforce any penalties or any other remedy against the plaintiff for disregarding said rates.

This order is made upon the express condition that any rates charged by the plaintiff shall not exceed the rates set forth in the schedule of rates described in the Bill of Complaint as I. P. U. C. No. 2,

And upon the further express condition that the plaintiff shall enter into its bond or undertaking in the sum of One Hundred Thousand Dollars ($100,000.00) said bond to be in form as the bond filed by the plaintiff upon the granting of the preliminary restraining order, to be approved by the Judge of the District Court of the United tSates for the Southern District of Illinois, and conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained hereby; and further conditioned so that in the event that this interlocutory injunction shall be hereafter dissolved, the plaintiff shall refund to its several subscribers, either in cash, or by credit upon subsequent bills, any sums paid by them in excess of the sums chargeable to them pursuant to any reasonable rate first hereafter made by the Illinois Commerce Commission.

It is further ordered that this order shall be in full force and effect until the final determination of this case, or until reasonable rates for the plaintiff are hereafter prescribed by the Illinois Commerce Commission or as otherwise may be provided by law.

George T. Page, Circuit Judge. Louis FitzHenry, District Judge. Walter C. Lindley, District Judge.

[File endorsement omitted.]

[fols. 54-56] Bond on interlocutory injunction for $100,000 approved and filed August 2, 1924; omitted in printing.

[fol. 57] Minute entry of argument and submission, March 30, 1925, omitted.

[fol. 58] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION TO DISMISS—May 6, 1925

This cause coming on to be heard upon the motion of the defendants to dismiss the bill of complaint herein and the court having heard and duly considered the same and being fully advised in the premises, it is ordered that the said motion be, and is hereby denied.

[fols. 59 & 60] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDERS ON MOTION TO DISMISS, ETC.—May 11, 1925

And now on this 11th day of May A. D. 1925, come the parties to this cause by their respective solicitors and by agreement of the said parties by their said solicitors, it is ordered by the court that the order heretofore entered herein on to wit: May 6th, A. D. 1925 be and same is hereby set aside. Upon motion of the said defendants by their solicitors leave is hereby granted the said defendants to withdraw their motion to dismiss the bill of complaint heretofore filed herein on to wit: July 30th, 1924. And the said defendants having this day filed a motion to dismiss the bill of complaint herein and the court having heard and duly considered the same, it is ordered that the said motion be, and the same is hereby denied. Thereupon the plaintiff entered a motion for a rule on the defendants to answer herein and the court having heard and duly considered the said motion and being now fully advised in the premises, it is ordered that the said defendants be, and they are hereby ruled to answer herein instanter; and the said defendants having elected in open court to stand by their said motion to dismiss and refuse to plead further, it is ordered by the court that the said defendants and each of them be, and they are hereby defaulted.

[fol. 61] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED MOTION TO DISMISS—Filed May 11, 1925

And now come the above named defendants, by Oscar E. Carlstrom, Attorney General of the State of Illinois, and Shelton F. McGrath and R. H. Radley, special assistants Attorney General, their attorneys, and move the Court to dismiss the bill of complaint filed herein and show to the Court the following reasons in support of this motion:

1. The order of the Commission finding that the rates set forth in I. P. U. C. No. 1 were just and reasonable as of July 31, 1920, was in effect a finding that the rates set forth in schedule I. P. U. C. No. 2 filed with the Commission before that time were not just and reasonable and disposed of said schedule No. 2.

2. The bill of complaint fails to show that the plaintiff has since the entry of the order of July 31, 1920, by the Public Utilities Commission of Illinois, filed any rate schedule on which said Commission could lawfully act.

3. The bill of complaint and exhibits made a part of it do not show that the plaintiff has exhausted its remedies before the Illinois Commerce Commission, and as a matter of comity between the Federal Government and State, a District Court should not take jurisdiction of a case of this character until the plaintiff has made it appear absolutely certain that it will be deprived of its rights by the State.

4. By filing a rate schedule with the Commission as provided by statute of the State of Illinois, the Commission would have been obliged to act upon such schedule or it would have become operative without such action more than a year before the filing of the bill of complaint herein.

[fol. 62] 5. If rate schedule No. 2 was pending before the Commission after the 31st of July, 1920, the plaintiff was wholly negligent and dilatory in not bringing the hearing on said schedule to a close and obtaining a decision of the Commission thereon prior to the filing of the bill of complaint herein.

6. The said bill of complaint shows that the plaintiff and its predecessor failed to exhaust its legislative remedies in connection with the premises for which relief is prayed in the bill of complaint.

7. This Court has no jurisdiction in this case because of the failure of the plaintiff to exhaust its legislative remedies provided by the State of Illinois.

8. There is no showing in the bill of complaint that the State of Illinois is about to or has or is attempting to confiscate the property of the plaintiff in violation of the Constitution of the United States.

9. Said bill of complaint shows that the Public Utilities Commission of the State of Illinois, on the 31st day of July, 1920 pursuant to the request of said petitioner, Central Union Telephone Company, the predecessor of the complainant herein, entered an order finding that the rates set out in the schedule referred to in said bill of complaint as I. P. U. C. No. 1, which were an increase over rates prior to that time charged by the petitioner therein, were fair and reasonable and fixed said rates as the legal rates for telephone service in said City of Peoria and vicinity; and said bill of Complaint further fails to show that said Central Union Telephone Company, or the complainant herein its successor, within two years from the date of the entry of said final order, or at any time since said date, has filed a petition setting up a new and different state of facts and invoking the action of the commission thereon, as by the Statute of the State of Illinois in such case is made and provided.

10. Said bill of complaint shows that the complainant and its predecessors have not only failed to proceed in the manner required by the statute of the State of Illinois in such case made and provided, in order to put said increased schedule of rates known as I. P. U. C. No. 2, or any other increased rates into effect, but on the [fol. 63] contrary the complainant and its predecessors have pro-

ceeded contrary to the statute in such case made and provided by filing the rates it now seeks to put into effect, referred to in said bill as I. P. U. C. No. 2, on the 1st day of April, 1920, prior to the entry of the final order of said Commission with reference to its schedule I. P. U. C. No. 1.

11. Said bill of complaint fails to show that the complainant has any franchise to operate a telephone exchange in said City of Peoria, or that it is in any way required to furnish such service other than by voluntary performance on its part.

12. Said bill of complaint fails to show that the complainant has any grounds of equitable relief, or is entitled to any of the relief prayed in said bill.

Oscar E. Carlstrom, Attorney General of the State of Illinois and Shelton F. McGrath, R. H. Radley.

[File endorsement omitted.]

[fol. 64] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SETTING ASIDE ORDER DEFAULTING DEFENDANTS—May 12, 1925

And now on this 12th day of May A. D. 1925, come the parties to this cause by their respective solicitors and by agreement of said solicitors, it is ordered by the Court that the default of the said defendants heretofore entered against them on to wit: May 11th, A. D. 1925, be, and the same is hereby set aside.

[fol. 65] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—May 12, 1925

This cause came on to be further heard at this Term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz:

1. That this Court has jurisdiction of the subject matter and of all of the parties to this cause.

2. That the allegations in the Bill of Complaint contained are true as therein stated.

3. That the equities of this cause are with the Plaintiff.

4. That the Defendants and each of them, to-wit: Frank L. Smith, Cicero J. Lindley, Hal W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright and William Burkhardt, constituting the Illinois Commerce Commission of the State of Illinois and Oscar E. Carlstrom, Attorney General of the State of Illinois (successor in office to Edward J. Brundage, formerly Attorney General of the State of Illinois), and all other persons, be permanently restrained and enjoined from any attempt to compel the Plaintiff, its officers, agents or employees, to observe or keep in force the rates and charges for telephone service in Plaintiff's Peoria Exchange prescribed by its Rate Schedule "I. P. U. C. No. 1"; and that said Defendants and each of them, and all other persons be permanently restrained and [fols. 65a-70] enjoined from taking any steps or proceedings against plaintiff, its officers, agents or employees, to enforce any penalties, fines, forfeitures or any other remedy, either under any statute or otherwise, by reason of the charging and collecting by the Plaintiff of higher rates and charges for telephone service in Plaintiff's said Peoria Exchange than in said Rate Schedule "I. P. U. C. No. 1" provided.

5. That this Decree shall be in full force and effect until such time as the rates of the Plaintiff are altered or amended according to law by proceedings not inconsistent with this Decree.

[fol. 71] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—May 12, 1925

The above named defendants, Frank L. Smith, Cicero J. Lindly, Hal W. Trovillion, William J. Smith, P. H. Moynihan, Edward H. Wright, and William Burkhardt, the persons constituting the Illinois Commerce Commission of the State of Illinois, having duly filed their petitions for appeal and assignment of errors therewith, it is ordered by the court that an appeal to the Supreme Court of the United States from the order overruling motion of defendants to dismiss the bill of complaint and from the final decree entered herein against said defendants be, and the same is hereby allowed and that a certified transcript of the record, affidavits, documents, and all proceedings herein be forthwith transmitted to said Supreme Court.

The appeal bond is fixed at $500.00 to be approved by the Clerk of this Court.

[fols. 72-74] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—June 8, 1925

This cause having come on to be heard upon the motion of the defendants for an extension of time for thirty days for filing the transcript of the record in the above entitled cause in the Supreme Court of the United States, pursuant to an appeal heretofore granted and filed herein, and the Court having heard the arguments of counsel, and being fully advised in the premises;

It is hereby ordered that the time for presenting and filing the transcript of the record in the above entitled cause in the Supreme Court of the United States pursuant to the appeal heretofore granted and filed in said cause in this Court, be and the same is hereby extended for a period of thirty days from the 11th day of June A. D. 1925.

[fols. 75 & 76] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—June 11, 1925

This cause having come on to be heard upon the motion of the defendants in the above entitled cause, for an extension of time of thirty days for filing the appeal bond in the above entitled cause, and the court having heard the arguments of counsel, and being fully advised in the premises:

It is hereby ordered that the time for filing of the appeal bond as to the said defendants, be, and the same is, hereby extended for a period of thirty days from the 11th day of June, A. D. 1925.

[fols. 77-79] Bond on appeal for $500.00, approved and filed July 2, 1925, omitted in printing.

[fol. 80] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—July 11, 1925

This cause coming on to be heard upon the motion of the defendants for an extension of time for the preparation of and filing of the transcript of record in said case in the Supreme Court of the United

States and for good cause shown, it is ordered by the Court that the time for preparing transcript of record herein and for filing and docketing the same in the United States Supreme Court, be, and the same is hereby extended for a period of thirty days from and after this date, to and including August 10th, A. D. 1925.

[fol. 81] Citation, in usual form, showing service on Cutting, Moore & Sidley et al., filed June 8, 1925, omitted in printing.

[fol. 82] Clerk's certificate to transcript of record from District Court omitted in printing.

[fol. 83] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION BY APPELLANTS OF PARTS OF RECORD TO BE PRINTED—Filed August 11, 1925

And now come the Appellants in the above entitled cause, and file the following as a statement of the points upon which they intend to rely on appeal from the Order overruling motion of appellants to dismiss the Bill of Complaint and from the final decree entered against said appellants:

1. The District Court erred in overruling the motion of appellants to dismiss the Bill of Complaint herein.

2. The District Court erred in granting the perpetual injunction herein against appellants.

3. The District Court had no jurisdiction of this case for the reason that the allegations in the Bill of Complaint do not show that the State of Illinois was confiscating, or had confiscated, or was about to confiscate, the property of the appellee, in violation of the Fourteenth Amendment to the Constitution of the United States.

4. The Bill of Complaint shows that the appellee or its predecessor has not exhausted its legislative remedies under the laws of the State of Illinois, which it should have done before applying to the District Court for relief.

[fol. 84] 5. The District Court erred in decreeing that the appellants and each of them, and all other persons, be permanently restrained and enjoined from taking any steps or proceedings against appellee, its officers, agents or employees, to enforce any penalties, fines, forfeitures, or any other remedy, either under any statute or otherwise, by reason of the charging and collecting by appellee of

higher rates and charges for telephone service in appellee's said Peoria Exchange than in said Schedule I. P. U. C. No. 1, provided.

6. The District Court did not have jurisdiction of the subject matter and all of the parties to this cause.

7. The District Court erred in entering the final decree herein, whereby the fifteen thousand (15,000) or more subscribers of appellee, affected by the increase of rates allowed by the court, and who were not made parties to this suit, were enjoined from instituting or prosecuting any proceedings or taking any steps with reference to protecting their rights in connection with the increase of rates.

8. The Final Decree granting a permanent injunction entered in said cause, is inequitable and unjust.

And the appellants hereby designate the following parts of the record, which they deem necessary and advisable for the consideration of the points relied upon as above set forth.

1. Bill of Complaint, and all Exhibits and Affidavits accompanying same.

2. The Original Motion of Appellants to Dismiss the Bill of Complaint.

3. The Amended Motion to dismiss the Bill of Complaint.

4. The Orders overruling said Motions.

5. The Final Decree.

Oscar E. Carlstrom, Attorney General of Illinois; R. H. Radley, Shelton T. McGrath, Harry C. Heyl, Attorneys for Appellants.

[fols. 85 & 86] Received a true and correct copy of the foregoing statement of points relied upon by appellants, and designation of parts of record to be printed, this 6th day of August, A. D. 1925.

Cutting, Moore & Sidley, Wm. D. Bangs, Philip Barton Warren, Attorneys for Illinois Bell Telehone Company, a Corporation, Appellee.

[fol. 87] [File endorsement omitted.]

[fols. 88 & 89] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION BY APPELLEE OF ADDITIONAL PARTS OF RECORD TO BE PRINTED—Filed August 26, 1925

And now comes the appellee in the above entitled cause and designates parts of the record in said cause, in addition to those parts designated by appellants, which it deems material to the consideration of said cause, to-wit:

All orders of the District Court and Statutory Court, including the orders granting the temporary restraining order and interlocutory injunction.

Cutting, Moore & Sidley, William D. Bangs, Philip Barten Warren, Attorneys for Appellee.

[fol. 90] [File endorsement omitted.]

Endorsed on cover: File No. 31,393. S. Illinois D. C. U. S. Term No. 670. Frank L. Smith, Cicero L. Lindley, Hal W. Trovillion, et al., &c., Appellants, vs. Illinois Bell Telephone Company. Filed August 11th, 1925. File No. 31,393.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1925.

FRANK L. SMITH, CICERO J. LINDLY, HAL W. TROVILLION, WILLIAM J. SMITH, P. H. MOYNIHAN, EDWARD H. WRIGHT, and WILLIAM BURKHARDT, the persons constituting the Illinois Commerce Commission of the State of Illinois, and OSCAR E. CARLSTROM, Attorney General of the State of Illinois,
Appellants,
VS.
ILLINOIS BELL TELEPHONE COMPANY, A Corporation,
Appellee.
No. 193. (30,677)

FRANK L. SMITH, CICERO J. LINDLY, HAL W. TROVILLION, WILLIAM J. SMITH, P. H. MOYNIHAN, EDWARD H. WRIGHT, and WILLIAM BURKHARDT, the persons constituting the Illinois Commerce Commission of the State of Illinois, and OSCAR E. CARLSTROM, Attorney General of the State of Illinois,
Appellants,
VS.
ILLINOIS BELL TELEPHONE COMPANY, A Corporation,
Appellee.
No. 670 (31,393)

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION.

BRIEF AND ARGUMENT FOR APPELLANTS.

OSCAR E. CARLSTROM,
Attorney General of the State of Illinois.
HARRY C. HEYL,
Counsel for Appellants.
R. H. RADLEY, and
S. F. McGRATH, of Counsel.

Counsel for Appellants intend to argue this case orally.

Bush Printing Co. Peoria, Illinois.

INDEX.

INDEX OF CASES.

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STATEMENT OF JURISDICTIONAL GROUNDS.

MAY IT PLEASE THE COURT:

The appellee in this case relies upon that part of Section 24 of the Judicial Code (Federal Statutes Annotated, Volume 4, Page 838) for jurisdiction of the District Court, which provides that the District Court shall have original jurisdiction, "where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of THREE THOUSAND ($3000.00) DOLLARS, and arises under the Constitution or Laws of the United States." (R. 2.)

Appeal No. 193 is an appeal from the order entered July 30th, 1924, by the Statutory Court, granting an interlocutory

injunction (R. 30-31) and the jurisdiction of this court is based upon Section 266 of the Judicial Code (Vol. 5 Federal Statutes Annotated, Page 983) which provides that an appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction.

Appeal No. 670 is an appeal from an order overruling the motion of appellants to dismiss the bill of complaint and from the final decree entered in said cause on May 12, 1925 (R. 32-33). The jurisdiction of this Court is invoked under Section 238 of the Judicial Code (Vol. 5, Federal Statutes Annotated, Page 794) on the grounds that it involves the application of the laws and constitution of the United States.

On December 14th, 1925, on motion of appellee, appeal No. 670 was advanced for hearing with appeal No. 193.

STATEMENT OF THE CASE.

This suit is brought for the purpose of restraining the members of the Illinois Commerce Commission, an administrative body under the statutes of the State of Illinois, and the Attorney General of Illinois (R. 1-2) from enforcing the collection by the appellee of rates and charges for telephone exchange service to its subscribers and patrons within the City of Peoria, and the Villages of Averyville, Bartonville, East Peoria and vicinity, in the State of Illinois, and referred to as Rate Schedule I. P. U. C. 1, hereinafter called schedule 1, and to further restrain said appellants from collecting or attempting to collect any penalties, fines, or forfeitures, either under any statute or otherwise, by reason of the charging and collection

by the appellee of higher rates and charges for telephone service than in schedule 1 specified (R. 2), on the grounds that the rates under which appellee is limited by the Commerce Commission, being schedule 1, are confiscatory, and that to compel appellee to continue charging said rates deprives appellee of its property without due process of law, and denies appellee the equal protection of the laws in violation of its rights under the Fourteenth Amendment to the Constitution of the United States (R. 2).

The Central Union Telephone Company, predecessor of appellee, filed a revised schedule of rates, known as I. P. U. C. 1, on July 22, 1919, covering telephone service in Peoria, and vicinity, which schedule it proposed to make effective August 1st, 1919 (R. 10). The Public Utilities Commission of Illinois, now Illinois Commerce Commission, suspended the effective date of this rate schedule until December 20th, 1919, and on November 28th, 1919, the Commission approved an order authorizing this schedule to become effective temporarily until January 31st, 1920, and subsequently entered supplemental orders extending the effective period of the proposed rates pending completion of the necessary investigation (R. 10).

On or about April 1st, 1920, said Central Union Telephone Company, predecessor of appellee, prior to a final disposition of schedule 1, filed with the Public Utilities Commission of Illinois a schedule of rates for telephone service applying to the Peoria Exchange effective May 1st, 1920, designated as Illinois Public Utilities Commission No. 2, cancelling Illinois Public Utilities Commission No. 1; and on the 19th day of April, 1920, the Commission entered an order suspending the effective

date of said schedule 2 until August 29th, 1920. On July 31st, 1920, the Commission entered an order finding that the schedule of rates known as I. P. U. C. 1 was just and reasonable and should be approved, and ordering that the Central Union Telephone Company be permitted and authorized to place into effect said rates on August 1st, 1920 (R. 13). No rate schedule has ever been filed by the utility since this order.

The Commission, after suspending schedule 2, from time to time and after holding a number of hearings thereon, entered an order on October 31st, 1921, permanently suspending schedule 2 (R. 14).

Appellee perfected and prosecuted an appeal to the Circuit Court of Peoria County, from the order of the Commission permanently suspending schedule 2, which appeal was determined on April 6th, 1922, reversing said order of October 31st, 1921 (R. 4). This order is not set out in the bill or exhibits, and the reason for the action of the Circuit Court is therefore unknown.

After this, several hearings were held by the Commission, in which evidence was introduced by appellee, the last hearing being on September 13th, 1922 (R. 4).

On the 16th day of September, 1922, appellee filed with the Commission a motion requesting the Commission to make effective a temporary schedule of rates pending the entry of the final order in said cause (R. 4), but no schedule of rates was filed by the Company with such request or showing made as required by the Public Utility Law of Illinois (Sec. 36 appendix).

On September 28th, 1922, the Commission denied without prejudice the motion of the appellee, filed September 16, 1922, for a temporary order establishing a temporary rate on less than thirty days' notice (R. 15-16).

From the date of the order denying the motion, September 28, 1922, to the date of the filing of the bill of complaint herein, July 18, 1924, a period of nearly two years, the appellee did nothing to press its hearing before the Commission except to write a letter on July 5th, 1923, requesting that the case be set for hearing at as early a date as possible. During all this time the matter was permitted by the appellee to lie dormant without any objection except the writing of this single letter. On June 18th, 1924, a little over one year after the letter requesting the Commission to fix a date for a hearing, had been written, appellee filed its bill of complaint in the United States District Court for the Southern District of Illinois, Southern Division (R. 1), and obtained a temporary restraining order on the bill and exhibits attached thereto on the same date.

On July 30, 1924, an interlocutory injunction was issued by the Statutory Court, and an appeal was perfected from said order which has been referred to as appeal No. 193 (R. 30-31).

Thereafter, on May 11, 1925, appellants filed an amended motion to dismiss the bill of complaint (R. 30-31-32, No. 670), and the Court overruled the said motion and entered a final decree in said cause granting the relief prayed (R. 32-33, No. 670). Appellants perfected an appeal from the order overruling their motion and from the final decree which has been referred to as Appeal No. 670 (R. 32-33).

ASSIGNMENT OF ERRORS.

Appellants urge the following errors for a reversal of the orders entered in said cause:

I.

1. The District Court erred in taking jurisdiction of this case.

2. The District Court erred in holding that the allegations in the Bill of Complaint showed that the appellee or its predecessor, has exhausted its legislative remedies under the laws of the State of Illinois.

3. The Bill of Complaint herein shows that the appellee, or its predecessor, did not exhaust its legislative remedies. under the laws of the State of Illinois.

4. The District Court had no jurisdiction of this case, for the reason that it was not shown that the State of Illinois was confiscating, had confiscated, or was about to confiscate the property of the appellee, in violation of the Fourteenth Amendment to the Constitution of the United States.

5. The Court erred in overruling the motion of appellants to dismiss the Bill of Complaint.

II.

6. The Court erred in granting the interlocutory injunction and the right to the appellee to increase its rates, as provided in said order.

7. The Court erred in entering the final decree and granting the perpetual injunction against the appellants.

8. The Court erred in decreeing that the appellants, and each of them, and all other persons, be permanently restrained and enjoined from taking any steps or proceedings against appellee, its officers, agents or employes, to enforce any penalties, fines, forfeitures, or other remedy, either under any statute or otherwise, by reason of charging or collecting higher rates, than those in Schedule of Rates, I. P. U. C. 1.

9. The Court erred in entering the final decree herein whereby fifteen thousand or more subscribers of

appellee, who were affected by the increase of rates, and who were not made parties to this suit, were enjoined from instituting or prosecuting any proceedings or taking any steps with reference to protecting their rights in connection with the increase of rates.

ARGUMENT.

I.

THE BILL OF COMPLAINT AND EXHIBITS SHOW THAT APPELLEE HAS NOT EXHAUSTED ITS LEGISLATIVE REMEDIES UNDER THE LAWS OF THE STATE OF ILLINOIS, AND, THEREFORE, THE DISTRICT COURT OF THE UNITED STATES SHOULD NOT HAVE TAKEN JURISDICTION OF THIS CASE.

Hurd's Revised Statutes of the State of Illinois, 1917, Chapter 111A, Section 36, Paragraph 36.

Hurd's Revised Statutes of the State of Illinois, 1917, Chapter 111A, Section 67, Paragraph 67.

Cahill's Revised Statutes of the State of Illinois, 1921, Chapter 111A, Section 36.

Cahill's Revised Statutes of the State of Illinois, 1921, Chapter 111A, Section 88.

Prentis vs. *Atlantic Coast Line Company*, 211 *U. S.* 210.

Bacon vs. *Rutland Railroad Company*, 232 *U. S.* 134

Mellon Company vs. *Charles McCafferty, as County Treasurer, et. al.*, 239 *U. S.* 134.

Wisconsin-Minnesota Light & Power Co. vs. *Railroad Commission*, 267 *Fed.* 711.

Cumberland Tel. & Tel. Co. vs. *Railroad and P. U. Commission*, 287 *Fed.* 406.

There is no allegation in the bill of complaint that either the Public Utility Act of the State of Illinois, in force January 1, 1914, or the Act as revised and amended which went in force July 1, 1921, is unconstitutional, and appellants will proceed in this argument on the theory that both of said Acts are valid and binding on appellee. The only authority for jurisdiction is that there is more than Three Thousand ($3000.00) Dollars involved in this case, exclusive of interest and costs, and that the subject matter arises under the Laws or Constitution of the United States. In order to invoke the aid of the Federal Court, appellee must allege sufficient facts, and not mere conclusions, that will bring it within the protection afforded by the Fourteenth Amendment to the Constitution of the United States.

The Public Utility Law of Illinois went into effect January 1, 1914, and those sections, which appellants rely upon to sustain their first contention, and which were in force in 1919 and 1920, are set out in full in the appendix hereto.

This Act was amended and revised by an Act of the Legislature of Illinois which went into effect July 1, 1921, and section 36 of the new law differed in no material respect from section 36 of the old law, except the following paragraph was omitted from the new law:

> "No public utility shall increase any rate or other charge, or so alter any classification, contract, practice, rule or regulation as to result in any increase in any rate, or other charge, under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified."

Section 88 of the new law is set out in the appendix and provides among other things that any investigation, hearing or proceeding instituted or conducted by the State Public Utilities Commission or Public Utilities Commission, shall be conducted and continued to a final determination by the Illinois Commerce Commission with the same effect as if this act had not been passed.

Appellants contend that appellee has not complied with the procedure laid down by the Statutes of Illinois, in order to put itself in a position to legally demand any increase of rates, and, therefore, has not exhausted its legislative remedies so as to give a Federal Court jurisdiction upon the theory that the State of Illinois, in the enforcement of its laws, is depriving appellee of its property without due process of law, and denying it equal protection of the law, in violation of the Fourteenth Amendment, for the following reasons:

FIRST: Schedule 1 was filed on the 22nd day of July, A. D. 1919, and became temporarily effective by order of the commission on November 28, 1919 (R. 2-3). Hearings were had thereon pending a final determination. Schedule 2 was filed on the 1st day of April, 1920, by which it was stated that schedule 1 was cancelled (R. 3). Hearings were thereafter had, and on the 31st day of July, A. D. 1920, which was subsequent to the filing of schedule 2 by which schedule 1 was cancelled, the Commission entered a final order which fixed the rates set forth in schedule 1 as fair and reasonable rates (R. 8). This adjudicated all matters covering this territory, so far as appellee was concerned, up to the date of this final order. No petition for rehearing, or no petition setting up a

new and different state of facts was ever filed as provided by section 67 (Appendix). No complaint was ever made by appellee to this order. It was, therefore, binding upon it. The only action that could be taken since July 31, 1920, was voluntary action on the part of the Commission.

SECOND: The appellee has never, at any time since the date of the entry of said final order of July 31st, 1920, filed any new schedule of rates pursuant to section 36 (Appendix).

The order of the Commission attached to the bill of complaint as "Exhibit A" (R. 8) shows that schedule 1 was filed on July 22nd, 1919, to become effective August 1, 1919, and was suspended until December 20, 1919. On November 28th, 1919, the Commission approved an order authorizing this schedule to become effective temporarily until January 31, 1920, and subsequently approved other supplemental orders extending the effective date of the proposed rates until the necessary investigation had been made.

The bill shows that on or about the first day of April, 1920, while Rate Schedule I. P. U. C. 1 was temporarily in effect (and before there had been an affirmative finding of the commission, as to the reasonableness of the rates therein contained), appellee, by its predecessor, filed a second schedule of rates for the same territory, effective May 1, 1920, and designated as I. P. U. C. No. 2, cancelling I. P. U. C. No. 1. The Public Utility Law of Illinois does not permit or enable appellee to carry on two rate hearings for the same locality at the same time (Sec. 36, Appendix), and the filing of rate schedule 2 prior to a final order being entered on schedule 1 amounted to an amendment of schedule 1, or it can-

celled schedule 1, or became consolidated with it, so that after April 1st, 1920, there was only one proceeding pending before the Commission.

The order of the Commission (R. 13) entered on July 31, 1920, contained the following finding:

> "That the Schedule of Rates known as I. P. U. C. No. 1 of the Central Union Telephone Company, applying to Peoria and vicinity, is just and reasonable, and should be approved."

This order finding that the rates fixed in schedule 1 were just and reasonable was a determination by the Commission that the rates in schelule 2, cancelling rates in schedule 1, which appellee was trying to put into effect as of May 1, 1920, were unreasonable, and such decision disposed of schedule 2, and no further proceedings with reference to schedule 2 could be legally had by the Commission.

This same order shows that the last hearing by the Commission prior to the entry of said final order on July 31, 1920 (R. 8), was held on May 18, 1920, and that the Central Union Telephone Company, predecessor of appellee, was represented by counsel. Schedule 2, cancelling schedule 1, had been filed by appellee on April 1, 1920, almost two months before this last hearing, and any additional reasons for applying for an increased rate over schedule 1 must have been presented to the Commission and taken into consideration by it before the entry of said final order disposing of both of these schedules.

Appellee has never filed any rate schedule or legal application for an increase in rates since the final order was entered on schedules 1 and 2 on July 31, 1920, and, therefore,

has never been in a position to legally demand any action on the part of the Commission. All of the proceedings or actions therein set forth after the final order was entered on July 31, 1920 (R. 3-4), were simply voluntary on the part of the Commission and upon its own initiative as provided by section 36, in which the appellee had no legal vested rights whatsoever. It must comply with the provisions of the Utility Law before it can legally demand that the Commission act.

If schedule 2 cancelled schedule 1 as appellee alleges and contends, then the order of July 31, 1920, certainly was final as to both of them, and if this is true, the Commission was not legally bound to hold hearings after that date.

If schedule 2 cancelled No. 1 the final order as to schedule 1 could operate on nothing but schedule 2.

Appellee cannot now claim that it is entitled to demand any consideration under schedule 2 nor can it base a charge of deprivation of property without due process of law on such facts as these.

The order of the Commission entered on July 31, 1920 (R. 8), shows that schedule 1 was filed on July 22, 1919, and at the request of appellee, was made temporarily effective on November 28, 1919. On March 31, 1920, appellee filed schedule 2 which, as pointed out, amounted to an amendment of schedule 1, took the place of or was consolidated with schedule 1, and the final order entered on July 31, 1920, disposed of both of these schedules. The order of the Commission of July 31, 1920, shows without question that the Commission conducted full, complete and impartial hearings as to these rates. There

is absolutely no statement in the bill of exhibits that would show a change of circumstances or conditions on which an increase of rates could be based, as requested in schedule 2, in the short time intervening between the filing of schedule 1 and schedule 2, and the order of October 31, 1921 (R. 14), by the Commission shows conclusively there never was a basis for schedule 2. If schedule 1 represented a fair increase at the time the final order was entered on July 31, 1920, to which no objection was made by appellee, then schedule 2 was either not properly filed during the pendency of the proceedings on schedule 1, or was an amendment of or became consolidated with schedule 1, and was disposed of by the final order of July 31, 1920, as long as there is no provision in the Utility Law of Illinois for carrying on two rate cases for the same territory at the same time.

No claim is made that appellee made any objection to the order entered on July 31, 1920, or that it has ever applied for a rehearing or made any attempt to have it rescinded, altered or modified, as provided by section 67 of the Utility Law. This section provides that—

> "After any order has been made by the Commission any party to the action may apply for a rehearing in respect to matters determined in the action or proceeding, and the Commission may grant and hold such rehearing, if in its judgment sufficient reason appears."

It cannot be assumed that the Commission on proper application for a rehearing would have denied appellee such relief. If new conditions have arisen as appellee claims, these matters should have been submitted to the Commission in the application for rehearing under this same section which provides as follows:

> "If after such rehearing and consideration of all the facts including those arising since the making of a rule, regulation, order or decision, the Commission shall be of the opinion that the original rule, regulation, order or decision, or any part thereof, is in any respect unjust or unwarranted or should be changed, the Commission may rescind, alter or amend the same."

It was undoubtedly the intention of the legislature by this provision, to permit a utility to obtain relief from an order, which not only might have been unwarranted under the evidence, but which had become unjust on account of new conditions or new facts arising after the entry of the same. Appellee certainly cannot ignore the provisions of this section of the Statute and base its case on a change of facts and conditions which it claims existed at the time schedule 2 was filed but has never been submitted to the Commission, as provided by law.

If appellee did not see fit to take advantage of its rights to apply for a rehearing, it still had a remedy which it did not make any attempt to exhaust, and that was to file a new petition under section 67, which provides,

> "Only one rehearing shall be granted by the Commission, but this shall not be construed to prevent any party from filing a petition setting up a new and different state of facts after two years, and invoking the action of the Commission thereon."

Appellee, therefore, had the right to either apply for a rehearing or file a petition after two years setting up the new conditions that it now claims make schedule 1 confiscatory.

Both of the remedies provided by section 67 are legislative, and must be exhausted by appellee before this Court has jurisdiction.

No strained or extraordinary application of the law involved in this case can permit appellee to stand by and ignore the remedies provided by section 67, when the rate fixed by the final order of July 31, 1920, was not confiscatory at the time it was entered and now claim that after new conditions and facts have arisen, of which the Commission had no notice whatever, that the rates fixed had become confiscatory and for that reason, it is entitled to relief in the Federal Courts. A different question might arise if appellee was complaining that the rates fixed by the final order of July 31, 1920, were confiscatory at the time they were approved, or was seeking relief from a rate arbitrarily fixed by the Commission. In this case, however, appellee is endeavoring to obtain relief from rates voluntarily established by itself, which were not confiscatory at the time they went into effect, and which have remained in effect because of appellee's failure to follow the procedure required by the laws of this State to obtain an increase in rates.

The bill alleges that the appellee on September 14, 1922, requested a prompt decision by the Commission on its schedule of rates filed April 1, 1920 (which said schedule was disposed of by the final order of July 31, 1920), and that pending the entry of a final order, a temporary schedule of rates be made effective on less than thirty days' notice (R. 15). This application for a temporary rate was not proper under section 36 of either the old law (appendix) or the new law (supra). Both sections gave the Commission power, for good cause shown, to allow changes without requiring the thirty days' notice provided therein. This request of appellee does not, in any manner, indicate or specify what the rates are to be, nor

does it appear that appellee made any showing whatever before the Commission that would justify such temporary increase. The order of the Commission attached to said bill as "Exhibit D" (R. 15-16) denies the request of appellee without prejudice, which would not have prevented it from filing its proposed changes in accordance with section 36, and making the showing as required therein. Appellee never appeared before the Commission and requested an opportunity to make the showing required by section 36, before a temporary rate could go into effect. The Commerce Commission cannot be charged with arbitrary action in denying this motion when the only showing that appellee made was contained in this motion, which was not even verified or supported by affidavit.

The law is well settled that in order to invoke the jurisdiction of the Federal Court, the rate making process must have reached the judicial stage. This principle was laid down by this Court in the case of *Prentis* vs. *Atlantic Coast Line Company*, 211 *U. S.* 210. The bills in that case were filed to enjoin the members and clerk of Virginia State Corporation Commission from publishing and taking other steps to enforce a certain order fixing passenger rates. The bills allege that the rates in question were confiscatory and violate the Fourteenth Amendment. The Courts of Virginia have legislative powers, and no appeal had been taken by the complainants to the courts of that state, from the orders or rates fixed by the Commission. The Court in its opinion said:

> "Our hesitation has been on the narrower question of whether the railroads, before they resorted to the Circuit Court, should not have taken the appeal allowed to them by the Virginia Constitution at the legislative stage,

so as to make it absolutely certain that the officials of the state would try to establish and enforce an unconstitutional rule. * * * * * *

If the rate should be affirmed by the supreme court of appeals and the railroads still should regard it as confiscatory, it will be understood from what we have said that they will be at liberty then to renew their application to the Circuit Court, without fear of being met by a plea of res judicata. It will not be necessary to wait for a prosecution by the commission. We may add that, when the rate is fixed, a bill against the commission to restrain the members from enforcing it will not be bad as an attempt to enjoin legislation or as a suit against a state, and will be the proper form of remedy. * * * * *"

Mr. Chief Justice Fuller, concurring in reversing the decree in this case, but dissenting from the opinion, says:

"In my opinion, a preliminary objection is fatal to the maintenance of these bills. It appears on their face that the appellees did not avail themselves of the right of appeal to the Court of Appeals of Virginia, which was absolutely vested in them by the constitution and laws of the commonwealth. Such an appeal would have brought up the question of the alleged unreasonableness of the designated rate, and appellees cannot assume that the decision of the commission would necessarily have been affirmed. If reversed or changed to meet appellees' views, the whole ground of equity interposition would disappear. In such circumstances it is the settled rule that courts of equity will not interfere. The transaction must be complete, and jurisdiction cannot be rested on hypothesis. A fortiori this must be so where Federal Courts are asked to interfere with the legislative, executive, or judicial acts of a state, unless some exceptional and imperative necessity is shown to exist, which cannot be asserted here.

Moreover, this is demanded by comity, and what comity requires is as much required in courts of justice as in anything else.

"Comity," said Mr. Justice Gray in the leading case of Hilton vs. Guyot, 159 U. S. 163, 40 L. ed. 108, 16 Sup. Ct. Rep. 143, "in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having

> due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws."
>
> And, as applied to Federal interference with state acts, the observance of this rule of comity should be regarded as an obligation. It is recognized as such by section 720 of the Revised Statutes."

In the case of *Bacon* vs. *Rutland Railroad Company*, 232 U. S. 134, the bill was filed to restrain the Public Service Commission of Vermont from enforcing an order concerning a passenger station of the company, at Vergennes, which order was alleged to violate the Fourteenth Amendment. A motion was made to dismiss the bill on the grounds that until the appellee had taken an appeal from the order to the Supreme Court of the State, the Federal Courts did not have jurisdiction. The motion was overruled and the defendants not desiring to plead, an injunction was issued as prayed. This Court reviewed the Prentis case (Supra.) and held that before it would apply, it must be established that legislative powers were conferred upon the Supreme Court of the State of Vermont; that inasmuch as the remedy by appeal was purely judicial, complainant had exhausted its legislative remedies and could apply to the Federal Courts for relief.

Appellants contend that in the case at bar, the proceedings before the Commission have not reached the judicial stage, and therefore, under these cases, this Court should not take jurisdiction.

That appellee must resort to its administrative remedies before this Court has jurisdiction, was again held to be the law in the case of Mellon Company vs. Charles McCafferty, as County Treasurer, et al., 239 U. S. 134. In that case a bill was

filed to enjoin the collection of taxes, on the grounds that the result of the assessments made gave rise to such inequality and discrimination as to make the assessments illegal under the State Constitution and Laws, and also repugnant to the equal protection and due process clauses of the Fourteenth Amendment. The lower courts held that the bill stated no equity because it failed to allege the adequate administrative remedies provided by the state law for the correction of wrongful valuation complained of, had been resorted to. It was urged that error was committed by the court below, in its ruling as to the state law since some of the remedies under that law, which it was held should have been resorted to for the purpose of correcting the assessment complained of, were not so available, and that these remedies were not required to be taken, because they would have been unavailing in the view of the nature of the wrong complained of. This Court in dismissing the writ of error for want of jurisdiction, held that the duty to resort to the adequate remedies provided by the state could not be escaped by assuming that if they had been resorted to, the wrong complained of would not have been rectified.

Under this last authority, appellee cannot maintain its bill without showing that it has resorted to the remedies afforded by the laws of this state, and that they have been unavailing, which it has failed to do under any construction most favorable to it.

Under section 36 of the law of 1921, hereinbefore set forth, a schedule of rates filed by the utility in the proper manner, goes into effect thirty days after the proper notice is

given as provided by section 36. The Commission may suspend the rate for not more than one hundred and twenty days beyond the time when such rate would otherwise go into effect, unless the Commission, in its discretion, extends the period of suspension for a further period of not exceeding six months, or in other words, unless the Commission determines what rates are just and reasonable within a period of eleven months from the time the schedule is filed and proper notice given, the rates in that schedule go into effect automatically. Appellee has been under no necessity of waiting for a decision of the Commission for a longer period than eleven months. If the appellee at any time after July 1, 1921, had properly filed an application for an increase of rates, unless the Commission acted on this application within eleven months, no one could have prevented it from going into effect at the end of that time. If on September 14, 1922, when appellee claims that it filed a motion for a temporary rate to be made effective on less than thirty days' notice (R. 15), it had filed an application for an increase of rates, unless the Commission acted, it would have been effective eleven months from that date. It does not seem just that appellee should be permitted to resort to equity for relief, when it had a plain and speedy remedy under the laws of the State of Illinois, which it has not exhausted, nor made any sincere or honest effort to exhaust. From the facts and circumstances, it appears that appellee did not desire to take advantage of the remedy provided by the laws of the State of Illinois, but on the other hand, desired to place the Commission in such a position that the aid of the Federal

Courts could be invoked and, thereby, obtain relief which it could not justly obtain, nor to which it was entitled, under the laws of the State of Illinois.

Assuming that the application of the Appellee to make schedule 2 effective was properly filed and is still pending and undetermined by the Commission, what has it done to secure a decision of the Commission on this application?

The bill alleges that schedule 2 was filed on April 1, 1920 (R. 4), that on the 6th day of June and the 6th day of July, 1922, there were hearings and evidence was introduced by the appellee; that a further hearing was held on the 13th day of September, 1922. The bill does not show which side introduced evidence at that hearing. It does not appear from the bill or any of the exhibits that appellee, since the 13th day of September, 1922, has appeared before the Commission, through its attorneys or agents, and asked for a further setting of the case. All it has done since that date is to make a formal request on September 14, 1922 (R. 15), for a prompt decision, and write a letter on the 5th day of July, 1923, requesting an early hearing of the case. For almost a year prior to filing this bill to enjoin the Commission, appellee has taken no steps whatever to bring the case to a hearing. The bill does not show that appellee has completed its evidence or closed its case. It undoubtedly had not, for its last request on July 5, 1923, was not for a prompt decision as it formerly requested on September 14, 1922, but for an early hearing. If appellee were sincere in its effort to obtain a finding by the Commission schedule 2 it certainly would have not permitted this matter to pend without an objection of any kind or character from July 7, 1922, to September 14, 1922, and from that

date until July 5, 1923, and from that time until the bill was filed in this case on June 18, 1924.

During all of the time from July 31, 1920, until the bill was filed two feeble efforts were made by appellee to obtain a hearing or hearings before the Commission, and after such negligence on its part, it now claims that the State of Illinois is violating the Constitution of the United States, and denying to it equal protection under the law. Appellee has done nothing to obtain relief before the Commission, other than the requests contained in its motion of September 14, 1922 (R. 15), and its letter of July 5, 1923. Would any court or commission draw the conclusion from those two requests that appellee was suffering confiscation of its property, and really desirous of a final determination of the matter under investigation? If appellee, through its many attorneys or agents, would have appeared before the Commission at any time prior to the filing of this bill of complaint, and insisted upon an immediate hearing and offered to make a proper showing that a temporary rate was necessary or that its property was being confiscated, or if appellee had filed a new schedule of rates at any time after July 31, 1920, when the final order was entered disposing of schedules 1 and 2, then upon a refusal by the Commission to act, there might be some merit in appellee's contention that the Commerce Commission of the State of Illinois refused or failed to act.

The bill in this case charges (R. 4):

> "That said Commission has refused and failed and continues to refuse and fail to continue further in said cause, and to determine the issues in said cause, and has refused and failed and continues to refuse and fail to de-

termine whether or not the rates and charges provided in Rate Schedule I. P. U. C. 2 are just and reasonable, and at no time has the plaintiff acquiesced or consented to any delay on the part of the said Commission."

This is the only allegation in the bill of complaint with reference to the action of the Commission, there being no charge that the delay in determining this matter is unreasonable or that the conduct of the Commission has been arbitrary, capricious or wrongful.

Assuming that schedule 2 was properly filed and proceedings had thereon in accordance with the law, even then without an allegation in the bill that the delay in determining the reasonableness of this schedule, is unreasonable, or that the conduct of the Commission has been arbitrary, capricious or wrongful, this Court would not have jurisdiction to restrain the Commerce Commission during the rate making process or during the time it is exercising its legislative powers.

This question was before the Federal Court in the *Wisconsin-Minnesota Light & Power Co.* vs. *Railroad Commission of Wisconsin*, 267 *Fed.* 711. The bill in that case alleged that the plaintiff filed with the defendant commission its petition in July, 1919, asking for an increase of rates in its entire service to thirty-two communities within the State of Wisconsin; that such proceeding was still pending and undetermined except as to three of the communities; that as to those the Commission had acted, awarding an increase of rates which the plaintiff charged to be confiscatory, and that plaintiff has been diligent in making use of every method afforded it under the laws of Wisconsin to obtain the approval of the Commission of such rates as are necessary to enable it to obtain a fair rate on

its property, and has been unable to obtain such permission from the Commission. In its opinion, the Court said on page 719:

> "Now the defendants rest upon these outstanding facts as a sufficient basis for challenging the plaintiff's attempt to resort to equity, in advance of a determination of the very matters comprehended within the bill by the tribunal which the state has constituted for that purpose, and whose jurisdiction the plaintiff has in fact invoked and concedes. We believe the challenge to be well founded, not only in reason and good sense, but rather clearly upon precedent, disclosed in cases like Prentis vs. Atlantic Coast Line, 211 U. S. 210, 29 Sup. Ct. 67, 53 L. Ed. 150, and Bacon vs. Rutland Railroad Co., 232 U. S. 134, 34 Sup. Ct. 283, 58 L. Ed. 538, and, as it is not claimed in the case before us that the delay in determining fully the pending petition before the Commission is unreasonable, or that the conduct of the Commission has been arbitrary or capricious, the authority of such cases is controlling, with respect to equitable interference pending legislative or administrative procedure by a duly constituted tribunal. * * * * *

The Court continues on page 720:

> "If, therefore, we assume that the plaintiff in this case invoked the jurisdiction of the State Railroad Commission for the broad purpose of considering and revising its rates as disclosed by itself in the petition filed in July, 1919, it would be anomalous to recognize the constant alternative of resorting to equity merely if, because of delay, disappointment in partial determination, or for other considerations, the further prosecution, or the awaiting of the final result of, the commission proceedings, was no longer desirable. And it is equally true that if, as suggested by plaintiff's counsel upon hearing of the present motion, a plaintiff may always resort to the Federal equity courts for the mere purpose of challenging as confiscatory, a rate or rule established by a state commission, it must follow that preliminary injunctions, when having no other support than the claim made by a plaintiff in the case like this, will prove a means of perpetually tying up the functioning of the state laws.
>
> The whole question arises, as we view it, not as one

of comity, but rather one of fact, in establishing the proposition that the state, through its tribunals, has committed, or is threatening to commit, aggression upon the complainant's property or property rights. Taking the broad case made by the plaintiff's bill, it is not that the rates originally fixed are now confiscatory, and that the state, through the defendant commission, adheres to them and refuses to give consideration to the facts recited in the bill; for the plaintiff has availed itself of the jurisdiction furnished by the state to conduct an inquiry into its rates and to award an increase. The plaintiff, except as to the three communities, does not pretend that the commission has denied or will deny all relief which it asks for in its petition. The most that it can claim, upon the broad aspect of its petition and the present bill, is that, if it ultimately prevails, or if it fails upon the issues presented to the commission, and the latter's determination is ultimately condemned by the Court, it will in either event sustain an interim loss. This seems to us to be purely a hypothetical, if not conjectural, basis for invoking the equity jurisdiction. (Prentis vs. Coast Line, supra.)

It clearly eliminates the necessity, ordinarily present in equity upon applications for a preliminary injunction, of a clear showing respecting not only the plaintiff's right, but of the defendants' wrong or aggression. It is one thing to make a clear prima facie showing, and quite another to merely set up the claim and ask that the injunction issue for interim protection because the plaintiff may prevail.

The matter can be presented in another way, through the simple query: Is the plaintiff in the present case disclosing, or attempting to disclose, a denial of, or an aggression upon, its property or property rights by the State, upon the same facts disclosed before the commission or inhering necessarily in the rate complained of; and has the State finally denied the plaintiff's right upon the facts so disclosed? This query, so it seems to us, is expressly answered in the negative by the plaintiff's bill, which, while complaining of the rates existent when its petition was filed in July, 1919, seeks not merely to present to this court the facts which then may have been pertinent, but other facts transpiring since the commencement of the proceedings before the commission upon which it lays, or seeks to lay, great emphasis."

The facts in the foregoing case are very similar to the

facts in the case at bar, and without a clear showing, respecting not only the plaintiff's right, but the defendants' wrong or aggression, this Court should not take jurisdiction.

In the case of *Cumberland Telephone & Telegraph Co.* vs. *Railroad and Public Utility Commission of Teennessee, et. al.*, 287 Fed. 406, the court held that a suspension during the rate making process is an incident to the proper exercise of the rate making process; and where such delay is not unreasonable (and there is no allegation in the bill in this case that it is), the utility is not entitled on the ground that the existing rates which it has established are confiscatory, to be granted an injunction which would permit it to increase the rates thus voluntarily established pending the due and proper exercise of the rate making process.

This Court cannot assume in the absence of a proper showing by appellee, that the delay by the Commission in passing on schedule 2 (even if it was properly filed) was unreasonable, or that the action of the Commission is arbitrary or wrongful. Many valid reasons might be assigned to justify such delay or action of the Commission which would prevent appellee from claiming a confiscation of its property on that account under the Fourteenth Amendment. The only presumption, under the bill and exhibits in this case, that can be indulged in without a showing to the contrary, is that the Commission was proceeding according to law, and whenever appellee places itself in a position to legally demand consideration by the Commission, such consideration will be granted.

We submit that appellee has not made the necessary showing under its bill and exhibits, to give this Court jurisdiction to grant the relief requested.

II.

THE INTERLOCUTORY INJUNCTION AND FINAL DECREE ARE VOID.

It is the contention of appellants that the final decree entered in this cause is void, and we desire to call the Court's attention to the terms thereof so far as the permanent injunction is concerned (R. 33):

> "4. That the defendants, and each of them, to-wit: * * * * * *, and all other persons, be permanently restrained and enjoined from any attempt to compel the plaintiff, its officers, agents, or employees, to observe and keep in force the rates and charges for telephone service in plaintiff's Peoria exchange, prescribed by its Rate Schedule I. P. U. C. No. 1; and that said defendants, and each of them, and all other persons, be permanently restrained and enjoined from taking any steps or proceedings against plaintiff, its officers, agents, or employees, to enforce any penalties, fines, forfeitures, or any other remedy, either under any statute or otherwise, by reason of the charging or collecting by the plaintiff of higher rates and charges for telephone service in plaintiff's said Peoria exchange, than in said Rate Schedule I. P. U. C. No. 1 provided."

It need not be pointed out that this decree is binding upon not only the parties to this suit, but all other persons, and prevents any of them from in any way protecting their individual rights under any circumstances whatsoever. Certainly the District Court would have no jurisdiction over anyone except the parties to this suit, and any attempt to restrain other persons who are not parties, whose rights the Commission cannot waive, and who have a right to demand that before the Commission acts, it must require appellee to follow the procedure laid down by the laws of the State of Illinois to obtain an increase in rates, is erroneous.

This decree permanently prohibits appellants or any other persons from taking any steps or proceedings against appellee, not only to enforce any penalties, fines, or forfeitures, but expressly prohibits any other remedy, which might be available under the laws of the State of Illinois, by reason of the charging and collecting by appellee of higher rates and charges, than in schedule 1. The force of this decree would be to permit appellee to charge any rate that it might see fit, whether reasonable or otherwise, without interference on the part of the Commission. It absolutely prohibits the exercise of all legislative or rate making powers by the Commission that in any way would affect schedule 2. If the action of the District Court is affirmed by this Honorable Court, the appellee will be protected in charging whatever rates it may see fit, and the Commerce Commission, the Attorney General, and all other persons, affected thereby, will have no recourse except to comply with the provisions of the permanent injunction.

The bill shows that appellee has over fifteen thousand seven hundred subscribers, who would come within the classification of "any other persons" enjoined by the final decree in this cause, everyone of whom would certainly have a right under the law to protect his or her individual rights against an excessive or unreasonable rate that might be arbitrarily fixed by appellee. The decree in this cause takes away, without the privilege of being heard, the rights of these many subscribers.

Appellants therefore respectfully urge:

1. That the filing of schedule 2 by appellee during the pendency of the proceedings on schedule 1 amounted to the substitution of schedule 2 for schedule 1 or a consolidation of

both schedules so that after April 1, 1920, there was only one proceeding pending before the Commission.

2. That the final order of the Commission entered on July 31, 1920, disposed of both schedules 1 and 2 and fixed a reasonable rate schedule for appellee to charge thereafter.

3. That after the entry of the order of July 31, 1920, fixing just and reasonable rates the appellee had the right under Section 36, at any time it saw fit, to file a new rate schedule. If this schedule was suspended, appellee had the right to demand immediate hearings thereon. Appellee filed no new schedule of rates after July 31, 1920, and therefore, did not follow the procedure provided by the laws of the State of Illinois to legally obtain an increase of rates.

4. That such hearings as were had after the 31st day of July, 1920, must be regarded merely as voluntary or taken upon the initiative of the Commission, and not brought about through the filing of any rate schedule by appellee in accordance with the Statutes of the State of Illinois.

5. That because of the fact that rate schedule 2 was disposed of and because of the fact that no new rate schedule was filed after such disposition, appellee has not exhausted its legislative remedies before the Illinois Commerce Commission.

6. That appellee did not file a petition for rehearing, or a petition setting up a new and different state of facts, as provided by section 67 of the Utility Act of the State of Illinois, and, therefore, has not exhausted its legislative remedies under this section.

7. If schedule 2 may be regarded as not disposed of by

the order of July 31, 1920, appellee is still in no position to resort to the Federal Court for the reasons, (a) that it was wholly dilatory and negligent in not procuring a hearing and determination on such schedule by the Commission; (b) there is no allegation of unreasonable delay or an arbitrary or willful refusal to act by the Commission.

8. The interlocutory injunction and final decree are void because they permanently enjoin the Commission or any person from taking any action to prevent an increase in rates and this amounts to a prohibition of the Commission from exercising its legislative power.

Appellants therefore respectfully request that the decree of the District Court be reversed and this case be dismissed.

All of which is respectfully submitted.

OSCAR E. CARLSTROM,
Attorney General of State of Illinois.

HARRY C. HEYL,
Counsel for Appellants.

R. H. RADLEY, and
S. F. McGRATH, of Counsel.

APPENDIX.

PERTINENT SECTIONS OF STATUTES RELIED UPON.

Sec. 36. CHANGE OF RATES.) Unless the Commission otherwise orders, no change shall be made by any public utility in any rate or other charge or classification, or in any rule, regulation, practice or contract relating to or affecting any rate or other charge, classification or service, or in any privilege or facility, except after thirty days' notice to the commission and to the public as herein provided. Such notice shall be given by filing with the commission and keeping open for public inspection new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect. The commission, for good cause shown, may allow changes without requiring the thirty days' notice herein provided for, by an order specifying the changes so to be made and the time when they shall take effect, and the manner in which they shall be filed and published. When any change is proposed in any rate or other charge, or classification, or in any rule, regulation, practice, or contract relating to or affecting any rate or other charge, classification or service, or in any privilege or facility, such proposed changes shall be plainly indicated on the new schedule filed with the commission, by some character to be designated by the commission, immediately preceding or following the item.

No public utility shall increase any rate or other charge, or so alter any classification, contract, practice, rule or regulation as to result in any increase in any rate or other charge, under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified.

Whenever there shall be filed with the commission any schedule stating an individual or joint rate or other charge, classification, contract, practice, rule or regulation, the commission shall have power, and it is hereby given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate or other charge, classification, contract, practice, rule or regulation, and pending the hearing and the decision thereon, such rate or other charge, classification, contract, practice, rule or regulation shall not go into effect: Povided, that the period of suspension of such rate

or other charge, classification, contract, practice, rule or regulation shall not extend more than one hundred and twenty days beyond the time when such rate or other charge, classification, contract, practice, rule or regulation would otherwise go into effect unless the commission, in its discretion, extends the period of suspension for a further period not exceeding six months. On such hearing the commission shall establish the rates or other charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. All such rates or other charges, classifications, contracts, practices, rules or regulations not so suspended shall, on the expiration of thirty days from the time of filing the same with the commission, or of such lesser time as the commission may grant, go into effect and be the established and effective rates or other charges, classifications, contracts, practices, rules and regulations, subject to the power of the commission, after a hearing had on its own motion or upon complaint, as herein provided, to alter or modify the same. Within thirty days after such changes have been authorized by the commission, copies of the new or revised schedules shall be posted or filed in accordance with the terms of section 34 of this act, in such a manner that all changes shall be plainly indicated.

Hurd's Revised Statutes of the State of Illinois, 1917, Chapter 111A, Section 36.

Sec. 67. MODIFICATION OF ORDER OR DECISION—REHEARING.) The commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any rule, regulation, order or decision made by it. Any order rescinding, altering or amending a prior rule, regulation, order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original rules, regulations, orders or decisions.

After any rule, regulation, order or decision has been made by the commission, any party to the action or proceedings, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to matters determined in said action or proceeding and specified in the application for rehearing, and the commission may grant and hold such rehearing on said matters, if in its judgment sufficient reason therefor be made to appear. An application for rehearing shall not excuse any corporation or person from complying with and obeying any rule, regulation, order or decision or any requirement of any

rule, regulation, order or decision or any requirement of any rule, regulation, order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission may by order direct. If, after such rehearing and consideration of all the facts, including those arising since the making of the rule, regulation, order or decision, the commission shall be of the opinion that the original rule, regulation, order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may rescind, alter or amend the same. A rule, regulation, order or decision made after such rehearing, rescinding, altering or amending the original rule, regulation, order or decision shall have the same force and effect as an original rule, regulation, order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original rule, regulation, order or decision unless so ordered by the commission. Only one rehearing shall be granted by the commission; but this shall not be construed to prevent any party from filing a petition setting up a new and different state of facts after two years, and invoking the action of the commission thereon.

Hurd's Revised Statutes of the State of Illinois, 1917, Chapter 111A, Section 67.

Sec. 88. PENDING ACTIONS AND PROCEEDINGS.) This Act shall not affect pending actions or proceedings, civil or criminal in any count brought by or against the People of the State of Illinois or the Board of Railroad and Warehouse Commissioners, State Public Utilities Commission, or Public Utilities Commission, or by any other person, firm or corporation under the provisions of the Acts establishing or conferring power on the Board of Railroad and Warehouse Commissioners, State Public Utilities Commission, or Public Utilities Commission, nor abate any causes of action arising thereunder, but the same may be instituted, prosecuted and defended with the same effect as though this Act had not been passed. Any investigation, hearing or proceeding, instituted or conducted by the Board of Railroad and Warehouse Commissioners, State Public Utilities Commission or Public Utilities Commission, prior to the taking effect of this Act shall be conducted and continued to a final determination by the Illinois Commerce Commission with the same effect as if this Act had not been passed.

Cahill's Revised Statutes of the State of Illinois, 1921, Chapter 111A, Section 88.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

ILLINOIS BELL TELEPHONE COMPANY, a corporation, Appellee, vs. **FRANK L. SMITH, CICERO J. LINDLY HAL W. TROVILLION, WILLIAM J. SMITH, P. H. MOYNIHAN, EDWARD H. WRIGHT**, and **WILLIAM BURKHARDT**, the persons constituting the Illinois Commerce Commission of the State of Illinois, and **OSCAR E. CARLSTROM**, Attorney General of the State of Illinois, Appellants.	No. 193.
ILLINOIS BELL TELEPHONE COMPANY, a corporation, Appellee, vs. **FRANK L. SMITH, CICERO J. LINDLY, HAL W. TROVILLION, WILLIAM J. SMITH, P. H. MOYNIHAN, EDWARD H. WRIGHT**, and **WILLIAM BURKHARDT**, the persons constituting the Illinois Commerce Commission of the State of Illlinois, and **OSCAR E. CARLSTROM**, Attorney General of the State of Illinois, Appellants.	No. 670.

MOTION TO DISMISS NO. 193 OR ADVANCE NO. 670

WILLIAM D. BANGS,
Counsel for Appellee.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1925.

ILLINOIS BELL TELEPHONE COMPANY, a corporation, Appellee, vs. FRANK L. SMITH, et al., Appellants.	}	No. 193.
ILLINOIS BELL TELEPHONE COMPANY, a corporation, Appellee, vs. FRANK L. SMITH, et al., Appellants.	}	No. 670.

NOTICE.

To Oscar E. Carlstrom,
Attorney-General of the State of Illinois.
Shelton F. McGrath,
R. H. Radley,
Harry C. Heyl,
Counsel for Appellants.

Please take notice that on Monday, the 7th day of December, A. D. 1925, at 12:00 noon, or as soon thereafter as counsel may be heard, Illinois Bell Telephone Company, a corporation, appellee in both of the above

entitled causes, will submit to the Supreme Court of the United States, a motion, a copy of which is attached hereto, petitioning said court to dismiss the appeal in the above entitled cause No. 193, or, in the alternative, to advance the above entitled cause No. 670 to be heard with No. 193.

Dated November 18., 1925.

ILLINOIS BELL TELEPHONE COMPANY.
By WILLIAM D. BANGS,
Its Counsel.

Received a copy of the foregoing notice this ..19th.. day of November, 1925.

(Signed) Oscar E. Carlstrom
Atty. Gen.
Harry Cor. Hoyt
Richard J. Barry
Hilton [illegible]

Counsel for Appellants.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1925.

ILLINOIS BELL TELEPHONE COMPANY, a corporation, Appellee, vs. FRANK L. SMITH, et al., Appellants.	No. 193.
ILLINOIS BELL TELEPHONE COMPANY, a corporation, Appellee, vs. FRANK L. SMITH, et al., Appellants.	No. 670.

MOTION TO DISMISS No. 193, OR IN THE ALTERNATIVE, ADVANCE No. 670.

Illinois Bell Telephone Company, a corporation, appellee in both of the above entitled causes, moves that the appeal in the above entitled cause No. 193 be dismissed, or, in the alternative, that the above entitled cause No. 670 be advanced to be heard with No. 193, and in support of said motion respectfully shows to the court:

The pending cases are two appeals taken in the same suit in equity brought by appellee to prevent the enforcement by the appellants of telephone rates in and

for its Peoria, Illinois, telephone exchange, which were alleged to be confiscatory and therefore void.

No. 193 is an appeal from an interlocutory injunction issued in said cause by the District Court of the United States for the Southern District of Illinois, and No. 670 is an appeal from a permanent injunction issued in said cause by said court.

At the hearing of appellee's motion for an interlocutory injunction, heard before three judges pursuant to Sec. 266 of the Judicial Code, based upon the bill and affidavits, an interlocutory injunction was granted, and the appellants appealed to this court (No. 193). The appellants did not answer but filed a motion to dismiss. Upon the denial of the motion to dismiss, appellants stood by their motion. No evidence was taken, and final decree was entered, as prayed for in the bill of complaint, from which final decree appellants appealed to this court (No. 670).

We submit that the same questions are involved in both appeals.

ILLINOIS BELL TELEPHONE COMPANY.
By WILLIAM D. BANGS,
Its Counsel.

BRIEF IN SUPPORT OF MOTIONS.

In support of its motion to dismiss the appeal in cause No. 193, appellee calls the attention of the court to the fact that No. 193, being an appeal from the interlocutory injunction in said cause, is merged in the appeal from the final order in said cause (No. 670), and should be dismissed. *Shaffner* v. *Carter*, 252 U. S. 37; *Pacific Telephone & Telegraph Co.* v. *Kuykendall*, 265 U. S. 196. In the cases cited the decrees temporary and permanent denied the injunction. In the present cases, the decrees granted the temporary and permanent injunctions. The cases cannot be distinguished on this basis, however, for the condition of the issuance of the temporary injunction is based upon the entry of a final decree, or the dissolution of the interlocutory decree.

In case the motion to dismiss should be denied, appellee has moved to advance case No. 670 to be heard by the court with case No. 193. As both appeals involve the same question, this motion is brought within paragraph 8 of Rule 18 of this court.

ILLINOIS BELL TELEPHONE COMPANY.
By WILLIAM D. BANGS,
Its Counsel.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1925.

FRANK L. SMITH, CICERO J. LINDLEY, HAL W. TROVILLION, WILLIAM J. SMITH, P. H. MOYNIHAN, EDWARD H. WRIGHT, and WILLIAM BURKHARDT, the persons constituting the Illinois Commerce Commission of the State of Illinois, and **OSCAR E. CARLSTROM,** Attorney General of the State of Illinois, Appellants, vs. **ILLINOIS BELL TELEPHONE COMPANY,** a corporation, Appellee.	No. 193. (30,677)
FRANK L. SMITH, CICERO J. LINDLEY, HAL W. TROVILLION, WILLIAM J. SMITH, P. H. MOYNIHAN, EDWARD H. WRIGHT, and WILLIAM BURKHARDT, the persons constituting the Illinois Commerce Commission of the State of Illinois, and **OSCAR E. CARLSTROM,** Attorney General of the State of Illinois, Appellants, vs. **ILLINOIS BELL TELEPHONE COMPANY,** a corporation, Appellee.	No. 670. (31,393)

BRIEF AND ARGUMENT OF APPELLEE.

PHILIP B. WARREN,
WILLIAM D. BANGS,
Solicitors for Illinois Bell Telephone Company.

CHARLES M. BRACELEN,
Of Counsel.

BARNARD & MILLER PRINT, CHICAGO

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BRIEF AND ARGUMENT OF APPELLEE.

STATEMENT OF CASE.

The appeals are from a temporary injunction and a final decree entered by the District Court, after overruling a motion to dismiss filed by the defendants. No answer having been filed, the allegations of the bill of

complaint are admitted to be true and should be fully stated to the court.

The bill of complaint filed June 18, 1924, by the Illinois Bell Telephone Company, appellee herein and hereinafter designated as the Company, sets forth the proceedings which the Company had taken before the Public Utilities Commission of Illinois and its successor, the Illinois Commerce Commission to secure increased rates for its Peoria exchange in the State of Illinois, and the failure of the Commissions to act thereon, which resulted in the confiscation of the Company's property.

As the following allegation of paragraph Seventh of the bill of complaint is admitted, no questions of valuation or of revenues and expenses are presented:

> "That at all the times herein mentioned said plaintiff and its predecessor in ownership of said Peoria exchange, said Central Union Telephone Company, have exercised in the management of said exchange all reasonable economies consistent with adequate and efficient service to its subscribers and patrons; that the net revenues derived by the plaintiff from the operations of said Peoria exchange left available for return, after the payment of operating expenses and taxes, $46,312.45 for the calendar year 1921; that for the following periods the revenues derived from said operations of said property have not been sufficient to pay said operating expenses and taxes, and have not paid any return on the said property of the plaintiff in said exchange, but have left deficits as follows:
>
> For the calendar year 1922, $48,458 deficit.
>
> For the calendar year 1923, $64,953 deficit.
>
> That the plaintiff has been incurring monthly deficits from said operations in said exchange for the several past months of the year 1924, whereby the plaintiff has suffered and continues to suffer great and irreparable loss and damage, and its property has been taken and continues to be taken without due process of law." (Rec., 5.)

The admitted facts showing the failure of the Commission to grant relief to the company against the admitted confiscation of its property are summarized as follows:

On July 22, 1919, the Company filed a schedule of rates with the Public Utilities Commission of Illinois which was made temporarily effective on November 28, 1919, by an order of the Commission in its proceeding designated as case No. 9311. (Rec., 3, 8.)

On the first day of April, 1920, before the Commission had finally disposed of Case No. 9311, the Company filed another schedule with the Commission, designated Schedule 2, to become effective May 1, 1920. The Commission took jurisdiction of this application for a new and different schedule of rates, entered an order April 19, 1920, suspending until August 31, 1920, the effective date of the schedule (Rec., 3), designating the proceeding as Case No. 10426. (Rec., 14.)

On July 31, 1920, the Commission entered an order in the proceeding pending before it, separately designated by it as "Case No. 9311," finally approving rate Schedule 1, which had been temporarily in effect since November 28, 1919. By this order the Commission deals solely with the application made by the Company for Schedule 1, and does not purport to dispose of the application made by the Company for Schedule 2 (Rec., 8-13), which the Commission had previously suspended until August 31, 1920.

After the Commission permanently disposed of the application for approval of Schedule 1, it proceeded with the application for approval of Schedule 2, holding hearings, receiving the Company's evidence and entering orders pertaining solely to such application, all parties entitled thereto under the statutes having notice and participating in said proceeding. (Rec., 3, 14, 15.)

On October 31, 1921, the Commission entered an order permanently suspending Schedule 2. (Rec., 14.)

The Company appealed from this order, as provided by statute, to the Circuit Court of Peoria County, which on April 6, 1922, reversed the Commission's order and remanded the case to the Commission for further proceedings. (Rec., 4.)

Pursuant to the mandate of the Circuit Court, this application for Schedule 2 was redocketed with the Commission, the Commission again took jurisdiction of it, held hearings in June and July of 1922, and received additional evidence in support of Schedule 2. (Rec., 4.)

In September, 1922, the Company moved for a temporary schedule of rates to be made effective on less than 30 days' notice. This motion was denied by an order of the Commission entered September 28, 1922. (Rec., 15.) No further proceedings were had by the Commission. On July 5, 1923, the Company wrote the Commission, calling attention to the date of the last hearing which was continued pending reports by the Commission's accountants and engineers, stating that the Company was losing $4,000 a month on the Peoria exchange, and requesting that the case be set for hearing at as early a date as possible. (Rec., 16.)

On June 18, 1924, the bill of complaint now before the Court was filed; over FOUR YEARS after the filing of the rate schedule, over TWO YEARS after the Circuit Court had reversed the final suspension order of the Commission, A YEAR AND A HALF after the Commission had denied temporary rates, and NEARLY A YEAR after the Company had again requested that the matter be disposed of by the Commission.

A temporary restraining order was issued June 18th by Fitz Henry, district judge (Rec., 26), and an inter-

locutory injunction followed July 30, 1924, on the order of a statutory court (Page, Circuit Judge, Lindley, District Judge, and Judge Fitz Henry) after a motion to dismiss had been filed by the defendants. (Rec., 28.) The motion to dismiss was denied May 6, 1925, and an amended motion (Rec., 30) was denied May 11, 1925, defendants stood by their motion to dismiss and a final decree entered (Rec., 32), which was appealed to this court.

Defendants had appealed to this court from the order granting the interlocutory injunction. (Case No. 193, October Term, 1925.) Upon appellee's moving to dismiss this appeal, on December 14, 1925, the appeal from the final decree (Case No. 670, October Term, 1925) was advanced for hearing with case No. 193, and further consideration of the motion to dismiss postponed until the hearing of the cases on the merits.

All references to the record in this brief are to the pages of the printed record in Case No. 670.

SUMMARY OF ARGUMENT.

I.

Final action by a regulatory State Commission is not a condition precedent to a Federal Court enjoining confiscatory rates; public utilities are not bound to suffer confiscation during the rate-making process.

Banton v. *Belt Line Ry. Corp.*, 268 U. S. 413.

Oklahoma Gas & Electric Co. v. *Corporation Commission of Oklahoma*, 261 U. S. 290.

Prendergast v. *New York Telephone Co.*, 262 U. S. 43.

The cases cited by the appellants are not controlling.

Chicago Railways Company v. *Illinois Commerce Commission*, 277 Fed. 970, 974.

Illinois Constitution 1870, Article III.

II.

Proper proceedings had been instituted by the Company before the Public Utilities Commission of Illinois, and were pending before the Illinois Commerce Commission.

Sections 32, 33, 35, 36, 85, Public Utilities Act, Laws of Illinois, 1913, page 478, Appendix "A" herein.

Section 88, Illinois Commerce Commission Law, Laws of Illinois, 1921, page 753, Appendix "B" herein.

Order of Circuit Court of Peoria County, April 6, 1922. (Rec., 4.)

III.

During the pendency of such proceedings, the Company's property had been confiscated; the Commissions had failed to act or grant any temporary relief.

Bill of Complaint (Rec., 1-16).

Chicago Railways Co. v. *City of Chicago*, 292 Ill. 190.

IV.

The right to make rates is with the Company, and the order of the Commission entered October 31, 1921, permanently suspending the Company's rate schedules, was void.

Illinois Bell Telephone Co. v. *Illinois Commerce Commission*, 304 Ill. 357.

The Commission's power to suspend the rate schedule filed by the Company expired after a period of ten months.

City of Edwardsville v. *Illinois Bell Telephone Co.*, 310 Ill. 618.

Alton Water Company v. *Illinois Commerce Commission*, 279 Fed. 869.

The Company might have made the increased rates effective after ten months, but was prevented by injunction.

Michel v. *Illinois Bell Telephone Co.*, 226 Ill. App. 50.

V.

The final decree of the District Court is in proper form, and should be affirmed.

ARGUMENT.

I.

Under the prior decisions of this Court the District Court should, upon a proper showing, enjoin the continued confiscation of the Company's property caused by the delay in action of the Illinois Commerce Commission. In *Oklahoma Natural Gas Co.* v. *Russell*, 261 U. S. 290, the opinion of Mr. Justice Holmes stated:

> "Coming to the principal question, if the plaintiffs respectively can make out their case, as must be assumed for present purposes, they are suffering daily from confiscation under the rate to which they now are limited. They have done all that they can under the state law to get relief and cannot get it. If the supreme court of the state hereafter shall change the rate, even *nunc pro tunc*, the plaintiffs will have no adequate remedy for what they may have lost before the court shall have acted. *Springfield Gas & E. Co.* v. *Barker*, 231 Fed. 331, 335. In such a state of facts *Prentis* v. *Atlantic Coast Line Co.* has no application. See *Love* v. *Atchison, T. & S. F. R. Co.*, 107 C. C. A. 403, 185 Fed. 321, 324, 325. Rules of comity or convenience must give way to constitutional rights."

The doctrine of the case as thus announced was followed in *Banton* v. *Belt Line Railway Corp.*, 268 U. S. 413, wherein a rehearing of the case before the Commission had been unduly delayed, and in *Prendergast* v. *New York Telephone Company*, 262 U. S. 43, where the Commission was continuing indefinitely the general investigation.

The bill alleges that in 1920 the Commission refused to set the proceedings for hearing, although requested by the Company (Rec. 3); attempted in 1921 to per-

manently suspend Schedule 2 (Rec. 4, 14); and denied an application for temporary rates in 1922 (Rec. 4, 15); and refused to proceed further in 1923, although the Company then stated to the Commission that it was losing $4,000 a month (Rec. 4, 16).

It is true that the bill does not characterize the action of the Commission as wrongful, unreasonable or arbitrary, but such conclusions are unnecessary as a matter of pleading.

Appellants cite in support of their position that the judicial stage of the proceedings had not been reached at the time of the filing of the bill in this case, the following cases:

Prentis v. *Atlantic Coast Lines*, 211 U. S. 210.

Bacon v. *Rutland*, 232 U. S. 134.

Mellon v. *McCafferty*, 239 U. S. 134.

Wisconsin-Minnesota Light & Power Co. v. *Railroad Commission of Wisconsin*, 267 Fed. 711.

Cumberland Telephone & Telegraph Co. v. *Commission*, 287 Fed. 406.

All of the above cases are distinguishable from the present case on their facts.

The case of *Prentis* v. *Atlantic Coast Lines* arose in a suit to enjoin the Virginia State Corporation Commission from enforcing an order fixing passenger rates alleged to be confiscatory, which rates had not yet been made effective and were subject to legislative action by the Virginia court.

In the case at bar rates complained of by appellee were effective for over four years before the filing of the bill of complaint; in *Oklahoma Gas Co.* v. *Corporation Commission*, 261 U. S. 290, the court said of the *Prentis* case:

> "The companies had made no effort to secure a revision and there had been no present invasion of their rights, but only the taking of preliminary steps toward cutting them down. In such circumstances it was thought to be more reasonable and proper to await further action on the part of the State."

In *Pacific Telephone Company* v. *Kuykendall*, 265 U. S. 196, the *Prentis* case is distinguished and limited.

All that was decided in *Bacon* v. *Rutland* cited by appellant, was that the Supreme Court of Vermont on appeals in utility cases acted in a judicial and not in a legislative capacity. Illinois Courts have no legislative power.

> *Chicago Railways Co.* v. *Illinois Commerce Commission*, 277 Fed. 970, 974.

In *Mellon* v. *McCafferty*, there was involved the question of the action of the lower court in dismissing the bill of complaint because of the failure of complainant to appeal to administrative tribunals of the state to secure an adjustment of his taxes,

The case of *Wisconsin-Minnesota Light & Power Co.* v. *Railroad Commission*, if a correct decision, must be limited to the peculiar facts then before the court.

In the Wisconsin case it appeared that the Commission was at the time of the filing of the bill functioning as to the determination of the matters complained of. In the present case, on the contrary, it definitely appears from the bill of complaint that the Commission failed to function as it has held no hearing, nor has taken any action (except to deny the Company's application for temporary rates on September 28, 1922) for a period of nearly two years before the filing of the bill. The later decision of this court in *Prendergast* v. *New*

York Telephone Company, 262 U. S. 43, is a clear limitation of any general rule in the Wisconsin case.

All that the case of *Cumberland Telephone & Telegraph Co.* v. *Commission* holds it that the Commission, incident to its power to regulate, may suspend a new schedule for a *reasonable* time. It will be noted that the bill in the *Cumberland* case was filed just a little over a month after the proposed effective date of the rate schedule under consideration in the case. Under the Public Utility Act of Tennessee the Commission was given definite authority to suspend a rate schedule for purposes of investigation for a period of three months, and in case its investigation was not completed within the three months' period, for a further reasonable time necessary for the completion of its investigation. The original three months' period did not expire until October 1, or until after the date of the opinion. In our case, instead of the month's delay of the Commission, there had been a delay of over four years, and instead of suit being brought within the ten months allowed the Illinois Commission as a period of suspension, the bill was filed over three years after the permissible period of suspension had expired.

II.

Apart from the federal question of confiscation raised by the bill of complaint, the record shows that the final decree of the District Court could be affirmed under the provisions of the Illinois statutes.

Under Section 36 of the Public Utilities Law, as construed by the Supreme Court of the State of Illinois, a public utility has the primary power to fix its rates, and the power of the Commission to suspend a rate schedule

filed by the utility is limited to ten months beyond the effective date. Upon the expiration of the ten months' period, the Company may charge the rates named in the schedule.

"An examination of section 36 of the act, however, is sufficient to disclose that the commission has no authority to make rates in the first instance, but a schedule of rates, where the rates are desired to be changed, is to be filed with the commission by the utility, and it is only where the commission, after a hearing, finds that the proposed schedule of rates, charges, etc., is not just and reasonable that it becomes the duty of the commission to fix rates."

* * *

Illinois Bell Telephone Co. v. *Commerce Commission ex rel. City of Edwardsville,* 304 Ill. 357, 360.

"Section 36 of the Public Utilities act provides that all rates or charges not suspended by the commission shall, on the expiration of thirty days from the date of filing, or such lesser time as the commission may grant, go into effect and be the established and effective rates or charges, subject to the power of the commission, after a hearing had upon its own motion or upon complaint, to alter or modify the same. The right of the public utility to fix its rates, subject to the power of the commission to suspend or alter them, is recognized. The power of the commission to suspend is limited to one hundred and twenty days beyond the time when the rate or charge would otherwise go into effect, unless the commission, in its discretion, extends the period of suspension for a further period not exceeding six months. That time having expired the rates are legally in effect, subject to the power of the commission to alter or change them. The commission may still establish just and reasonable rates, but until that is done the company may charge the rates named in the schedule."

City of Edwardsville v. *Illinois Bell Telephone Co.,* 310 Ill. 618, 622.

See also

Alton Water Company v. *Illinois Commerce Commission,* 279 Fed. 869, 872.

The Company, having the right to make the increased rates in Schedule 2 effective under the Illinois law, and having actually made these rates effective under the temporary restraining order and interlocutory injunction in the present proceedings (Rec., 26, 28), it was entitled to a final decree enjoining the defendants from compelling the Company to continue in effect the lower rates in Rate Schedule 1. The final decree could be affirmed upon this basis, irrespective of any question of confiscation.

Counsel for appellant admit the construction of the Illinois statute, but endeavor to contend that because the Company did not make its rates effective after the lapse of the suspension period, it could not institute this proceeding to protect its property from confiscation. This is a surprising statement from counsel for the appellant, who well know the following facts which appear in the reports and records of the Illinois courts:

The Company had served notice upon the Commission and the City of Peoria that it would make the rates effective from August 27, 1921, under a decision of the Circuit Court of Sangamon County. It was enjoined from so doing by the City of Peoria on November 1, 1921, and the temporary injunction secured by the City was affirmed by the Appellate Court. *Michel* v. *Illinois Bell Telephone Company,* 226 Ill. App. 50. After this decision the Supreme Court of Illinois in the case last cited (*City of Edwardsville* v. *Illinois Bell Telephone Company,* 310 Ill. 618) construed Section 36 of the Illinois statute contrary to the decision of the Appellate Court, but the Circuit Court of Peoria County, (although it had previously re-

versed the final suspension order of the Commission (Rec,. 4)) refused to follow the decision of the Supreme Court of Illinois, apparently believing that the decision of the Appellate Court on an appeal from an interlocutory order constituted the "law of the case." *The Circuit court entered a final decree permanently enjoining the Company from charging the increased rates in schedule No. 2,* "except upon the authority or finding of the Illinois Commerce Commission that such rates are justified or reasonable pursuant to the Statute in such case made and provided, or except upon the authority or order of a court of competent jurisdiction." (Appendix C, pp. 30-37.) As this decree, entered May 26, 1924, did not prevent the Company from proceeding in the Federal Court, the present suit was instituted. The injunction granted by the Federal Court had the effect of releasing the Company from the injunction of the Circuit Court and enabled the Company to put the increased rates into effect. (Note 1.)

IV.

Opposing Counsel's principal contention is that the Company has not exhausted its legislative remedy. This contention is based upon the fact that the Company's application to the Commission for the latter's authority to

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NOTE 1:—

It is also of interest in this connection to note that the Company attempted to secure an injunction against the Illinois Commerce Commission in the State Courts so that it could make rates effective in a situation similar to that in Peoria, but a demurrer to the bill was sustained and upheld by the Appellate Court. *Illinois Bell Telephone Company* v. *Illinois Commerce Commission*, 227 Ill. App. 23. And by the Supreme Court, *Illinois Bell Telephone Company* v. *Commerce Commission*, 306 Ill. 109. Counsel for the City of Peoria, who are of counsel in the case at bar, appeared in the Appellate Court as *amici curiae*.

change the rates in Schedule 1 to those proposed in Schedule 2, was made to the Commission before the Commission had authorized the rates in Schedule 1. The way to ascertain whether the Company has exhausted its legislative remedy is to first find out what its legislative remedy is and then what it did toward attempting to assert that remedy.

The legislative remedy is contained in the Public Utilities Act of 1913. Section 32 of that Act prohibits unjust rates. Section 33 provides the Company shall file with the Commission and keep open for public inspection all rates charged by it. Section 35 provides no service shall be rendered unless or until the rates have been filed and published as therein provided. Section 36 provides no rates shall be changed except after thirty days' notice to the Commission and to the public, which shall be given by filing the rates with the Commission, keeping them open for public inspection and publication in a newspaper. This section also provides *"whenever"* there shall be filed with the Commission any schedule, the Commission shall have power to enter upon a hearing concerning the propriety thereof and pending such hearing may suspend the proposed rate. This section also provides that *on such hearing* the Commission *shall establish the rate so filed with it or others in lieu thereof which it shall find to be just and reasonable.* (Appendix I, post.)

It is to be seen therefore that when the Company desired to change its rates, its legislative remedy was to proceed in the manner provided by Section 36 of the Act. Opposing counsel do not contend that the Company did not file with the Commission Schedule 2 and give the notice required by Section 36. It did so file Schedule 2, making the change in its rates; it did give the notice required by that section; the Commission acting in the

very manner provided for when a utility seeks a change in its rates, did suspend the proposed rate and did enter upon hearings as to its propriety. At these hearings evidence was introduced in support of the proposed change in rates and finally an order was entered by the Commission dealing solely with this proposed change in rates by which the Commission permanently suspended the rate and refused to grant its approval of the same.

At that point the Company had exhausted the only legislative remedy provided for it by the Illinois Statute to procure a change of existing rates. However, the Company went further. It applied for a rehearing and this application was denied. It even went further and appealed from the order of the Commission entered Oct. 31, 1921 permanently suspending the rate Schedule 2 to the Circuit Court of Peoria County as provided for in the statute. The Circuit Court reversed the order of the Commission and remanded the case to the Commission, "for further proceedings therein." (Rec., 4.) This decision bound the Commission to proceed irrespective of any possible technical defect in the filed schedules. Two additional hearings were then held at which further evidence was introduced by the Company. But notwithstanding the mandate of the Circuit Court that the Commission proceed to fix just and reasonable rates upon the application which the Company had made to it, the Company's request for temporary relief was denied. The Supreme Court of Illinois had decided that the Commission could grant temporary relief pending final disposition of a rate proceeding. *Chicago Railways Co.* v. *City of Chicago*, 292 Ill. 190, 202. The Company's request for the closing of the proceedings was disregarded. It was only at this point that the Company resorted to a Federal Court of Equity for the purpose of asserting its constitutional rights.

The argument of opposing counsel is based entirely upon their mere assertion that the Company had no right to make application to the Commission for a change in rates while there was still pending before the Commission a former application for change in rates. The court is cited to no part of the statute which prohibits a utility from proceeding in such a manner, and none can be found for the statute contains no such prohibition. On the contrary Section 36 expressly provides that *"whenever"* there shall be filed with the Commission any schedule, the Commission shall have power to suspend such rate pending an investigation as to its propriety. *When, on the first day of April,* 1920, *the Company filed Schedule* 2 *with the Commission, it brought itself within the provisions of Section* 36 providing that *"whenever"* a schedule was filed with the Commission it had power to suspend it and investigate its propriety.

That the Company was asserting its legislative remedy by so filing Schedule 2, *was recognized by the Commission itself* when, acting under the authority granted it in Section 36, it suspended the schedule before it disposed of Schedule 1, treating it as a separate and independent proceeding, in no way connected with the application for Schedule 1. The Commission having finally disposed of Schedule 1 by its order of July 31, 1920, thereafter continued to investigate, by formal hearings, the propriety of Schedule 2.

What is the reasoning underlying the decisions requiring a utility to exhaust its legislative remedy before asserting its legal remedy? *It is solely that the State may have a reasonable opportunity to grant relief before resort is made to the courts.* The State is given a reasonable opportunity to grant relief when the facts showing confiscation are presented to the Agency of the State

created for the purpose of investigating and acting upon such facts, in the manner provided by the statutes.

The State, by its counsel appearing in this court, admits facts showing that the rates in effect were confiscatory. The State cannot now be heard to say that it did not have an opportunity to investigate the facts creating such confiscation when it admits (as it does by its motion to dismiss) that the proposed change in rates was filed with it strictly in accordance with the provisions of Section 36 of the Act, and its Commission acting under the authority granted by such section, suspended said proposed rates, *entered upon an investigation as to their propriety, and arrived at a conclusion, expressed in its final order of October* 31, 1921, *suspending permanently Schedule* 2, *that such rates should not be authorized.*

We submit with confidence that the Statutes of Illinois and the decisions of the courts will be searched in vain for any denial, expressed or implied, of the power of the Commission to entertain plaintiff's application for Schedule 2, investigate its propriety and arrive at a conclusion as to whether the proposed rates were just and reasonable, while there was pending at the same time the proceeding involving Schedule 1.

The bill alleges in the usual phraseology of rate schedules that a schedule was filed April 1, 1920, *effective* May 1, 1920, designated as quoted in the bill, "Illinois Public Utilities Commission No. 2, cancelling Illinois Public Utilities Commission No. 1." (Rec., 3.) Counsel seek to play with the word "cancelling" used in the schedule, but a moment's thought demonstrates that no schedule cancels a prior schedule on file until the later filed schedule becomes effective, and when it does become effective it must cancel the prior schedule. Schedule No. 2 never became effective under an order of the Commission, so Schedule No. 1 was never canceled.

We cannot follow the argument of counsel based upon Section 67 of the Illinois statute relative to rehearings. When the permanent suspension order of October 1, 1921, was entered by the Commission, a petition for rehearing was filed by the Company, denied, and the order reversed upon appeal.

When the Commission entered its final order in case No. 9311 (Rec., 8-13), on July 31, 1920, it had entered an order on April 19, 1920, suspending until August 29, 1920, the effective date of the schedules filed in case 10426 (Rec., 3), and had previously put into effect on Nov. 28, 1919, the schedules involved in Case 9311. The Company's losses were constantly increasing, a return of $46,000 in 1921 becoming a deficit of $48,000 in 1922. (Rec., 20.)

The Company expended $1,600,000 in net additions to its property in Peoria from July 1, 1919, to December 31, 1923, doubling the value of its investment (Rec., 5) and losing over $100,000 on its operations in 1922 and 1923 with continued losses in 1924, and without any return on its original or increased plant.

Confident perhaps of eventual relief, but knowing that no process of law could afford recoupment of its losses, the Company continued to fulfill its obligations to its subscribers and carry out the traditions of the Bell System.

V.

The final decree very properly provided "that this decree shall be in full force and effect until such time as the rates of the plaintiff are altered or amended according to law by proceedings not inconsistent with this decree." (Rec., 33.) The rates were and are still subject to a proper order of the Illinois Commerce Commission.

Since a proceeding to enjoin confiscation is *quasi in rem*, the form of the decree very properly enjoined all persons as well as the Commission and its legal representative from interfering with the order of the Court. *Pacific Telephone & Telegraph Co.* v. *Star Publishing Co.*, 2 Fed. (2d series) 151. No proceedings could have been instituted by any subscriber against the Company contrary to the decree entered by the District Court.

CONCLUSION.

In *Knoxville* v. *Knoxville Water Co.*, 212 U. S. 1, 18, the court said, with reference to the regulation of public service corporations:

> "It is a delicate and dangerous function, and ought to be exercised with a keen sense of justice on the part of the regulating body, met by a frank disclosure on the part of the company to be regulated. The courts ought not to bear the whole burden of saving property from confiscation, though they will not be found wanting where proof is clear. The legislatures and subordinate bodies, to whom the legislative power has been delegated, ought to do their part."

We venture to suggest that the record now before the Court shows not only a lack of justice, but a complete failure on the part of the regulating body to perform its proper function.

The appeal in case 193 should be dismissed, with costs, for the reasons stated in the Company's motion. Moreover, the interlocutory injunction was properly issued within the discretion of the statutory court.

As to the appeal from the final decree, the defendants admit confiscation of the property of the Company, and before the District Court did not attempt to deny by answer the facts stated in the bill. They now

attempt to nullify the proper relief granted the Company by the District Court by attacking the form of proceedings instituted by the Company before the Commission, and the form of the final decree entered by the District Court. The technical objections are not well taken, and the final decree of the District Court in case 670 should be affirmed, with costs.

On the next succeeding pages we append for the convenience of the court a chronological statement of the various acts and proceedings of the courts and Commissions.

Respectfully submitted,

PHILIP B. WARREN,
WILLIAM D. BANGS,
Solicitors for Illinois Bell Telephone Company.

CHARLES M. BRACELEN,
Of Counsel.

February 20, 1926.

SUMMARY OF PROCEEDINGS.

July 22, 1919—Schedule 1 filed with Public Utilities Commission.

November 28, 1919—Schedule 1 made effective by Commission pending final hearing.

April 1, 1920—Schedule 2 filed, effective May 1, 1920.

April 19, 1920—Schedule 2 suspended by Commission until August 29, 1920.

July 28, 1920—Schedule 2 resuspended by Commission until February 26, 1921.

July 31, 1920—Final order of Commission approving Schedule 1.

November 12-13, 1920—Hearing before Commission on Schedule 2.

December 3, 1920—Hearing before Commission on Schedule 2.

February 23, 1921—Schedule 2 resuspended by Commission until August 26, 1921.

July 1, 1921—Illinois Commerce Commission succeeded Public Utilities Commission of Illinois.

July 28, 1921—Illinois Commerce Commission resuspended Schedule 2 to February 23, 1922.

October 31, 1921—Order entered permanently suspending Schedule 2.

November 1, 1921—Company enjoined by Circuit Court of Peoria County from making Schedule 2 effective.

December 2, 1921—Company applied to Commission for a rehearing on order of October 31, 1921.

December 20, 1921—Rehearing denied.

April 6, 1922—Circuit Court of Peoria County reversed Commission and remanded cause to it for further proceedings therein.

June 6, 1922—Hearing before Commission, after redocketing.

July 6, 1922—Hearing before Commission.

August 5, 1922—Appellate Court affirmed interlocutory injunction issued by Circuit Court of Peoria County, restraining Company from making Schedule 2 effective (*Michel* v. *Illinois Bell Tel. Co.*, 226 Ill. App. 50.).

September 13, 1922—Hearing before Commission.

September 16, 1922—Company filed with Commission written motion for temporary schedule of rates.

September 28, 1922—Commission denied Company's motion for temporary rates.

July 5, 1923—Company asked Commission in writing to set cause for hearing and determination, pointing out deficits in operation.

December 19, 1923—Supreme Court of Illinois held Commission cannot suspend rate schedule for period longer than 10 months, and Company may charge the rates thereafter. (*Edwardsville* v. *Illinois Bell Tel. Co.*, 310 Ill. 618.)

May 26, 1924—Circuit Court of Peoria County permanently enjoined Company from making Schedule 2 effective except upon authority or order of court of competent jurisdiction. (See Appendix C, p. 30.)

June 18, 1924—Bill of Complaint filed in United States District Court for Southern District of Illinois, Southern Division.

APPENDIX A.

"(Section 32) **GENERAL DUTIES OF PUBLIC UTILITIES.** All rates or other charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful. * * *"

Laws of Illinois, 1913, p. 476.

"(Section 33) **FILING SCHEDULE OF RATES.** Every public utility shall file with the commission and shall print and keep open to public inspection schedules showing all rates and other charges, and classifications, which are in force at the time for any product or commodity furnished or to be furnished by it, or for any service performed by it, or for any service in connection therewith, or performed by any public utility controlled or operated by it. Every public utility shall file with and as a part of such schedule and shall state separately all rules, regulations, terminal, icing, storage or other charges, privileges and contracts that in any manner affect the rates charged or to be charged for any service. Such schedule shall be filed for all services performed wholly or partly within this State, and the rates and other charges and classifications shall not, without the consent of the commission, exceed those in effect on July 1, 1913. But nothing in this section shall prevent the commission from approving or fixing rates or other

charges or classifications from time to time, in excess of or less than those shown by said schedules. * * *"

Laws of Illinois, 1913, p. 476.

"(Section 35) **NO SERVICE TO BE RENDERED UNTIL SCHEDULES FILED.** No public utility shall undertake to perform any service or to furnish any product or commodity unless or until the rates and other charges and classifications, rules and regulations relating thereto, applicable to such service, product or commodity, have been filed and published in accordance with the provisions of this act: *Provided,* that in cases of emergency, a service, product or commodity not specifically covered by the schedules filed, may be performed or furnished at a reasonable rate, which rate shall forthwith be filed and shall be subject to review in accordance with the provisions of this Act."

Public Utilities Act, Laws of Illinois, 1913, p. 478.

"(Section 36) **CHANGES OF RATES.** Unless the commission otherwise orders, no change shall be made by any public utility in any rate or other charge or classification, or in any rule, regulation, practice or contract relating to or affecting any rate or other charge, classification or service, or in any privilege or facility, except after thirty days' notice to the commission and to the public as herein provided. Such notice shall be given by filing with the commission and keeping open for public inspection new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect. The commission, for good cause shown, may allow changes without requiring the thirty days' notice herein provided for, by an order specifying the changes so to be made and the time when they shall take

effect, and the manner in which they shall be filed and published. When any change is proposed in any rate or other charge, or classification, or in any rule, regulation, practice, or contract relating to or affecting any rate or other charge, classification or service, or in any privilege or facility, such proposed changes shall be plainly indicated on the new schedule filed with the commission, by some character to be designated by the commission, immediately preceding or following the item.

No public utility shall increase any rate or other charge, or so alter any classification, contract, practice, rule or regulation as to result in any increase in any rate or other charge, under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified.

Whenever there shall be filed with the commission any schedule stating an individual or joint rate or other charge, classification, contract, practice, rule or regulation, the commission shall have power, and it is hereby given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate or other charge, classification, contract, practice, rule or regulation, and pending the hearing and the decision thereon, such rate or other charge, classification, contract, practice, rule or regulation shall not go into effect: Provided, that the period of suspension of such rate or other charge, classification, contract, practice, rule or regulation shall not extend more than one hundred and twenty days beyond the time when such rate or other charge, classification, contract, practice, rule or regulation would other-

wise go into effect unless the commission, in its discretion, extends the period of suspension for a further period not exceeding six months. On such hearing the commission shall establish the rates or other charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. All such rates or other charges, classifications, contracts, practices, rules or regulations not so suspended shall, on the expiration of thirty days from the time of filing the same with the commission, or of such lesser time as the commission may grant, go into effect and be the established and effective rates or other charges, classifications, contracts, practices, rules and regulations, subject to the power of the commission, after a hearing had on its own motion or upon complaint, as herein provided, to alter or modify the same. Within thirty days after such changes have been authorized by the commission, copies of the new or revised schedules shall be posted or filed in accordance with the terms of section 34 of this Act, in such a manner that all changes shall be plainly indicated."

Laws of Illinois, 1913, p. 478; Revised Statutes, Illinois, Hurd, 1913, Chapter 111a, Section 36.

"(Section 85) **TECHNICAL OMISSIONS NOT TO INVALIDATE ACTS OF COMMISSION.** A substantial compliance with the requirements of this Act shall be sufficient to give effect to all the acts, orders, decisions, rules and regulations of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto."

Laws of Illinois, 1913, p. 502.

APPENDIX B.

"(Section 88) This act shall not affect pending actions or proceedings, civil or criminal, in any court, brought by or against the People of the State of Illinois or the Board of Railroad and Warehouse Commissioners, State Public Utilities Commission, or Public Utilities Commission, or by any other person, firm or corporation under the provisions of the Acts establishing or conferring power on the Board of Railroad and Warehouse Commissioners, State Public Utilities Commission or Public Utilities Commission, nor abate any causes of action arising thereunder, but the same may be instituted, prosecuted and defended with the same effect as though this Act had not been passed. Any investigation, hearing or proceeding, instituted or conducted by the Board of Railroad and Warehouse Commissioners, State Public Utilities Commission or Public Utilities Commission, prior to the taking effect of this Act shall be conducted and continued to a final determination by the Illinois Commerce Commission with the same effect as if this Act had not been passed."

Laws of Illinois, 1921, p. 753.

APPENDIX C.

IN THE CIRCUIT COURT,
To the May Term, A. D. 1924.

STATE OF ILLINOIS,
COUNTY OF PEORIA. } ss.

Victor P. Michel, as Mayor of the City of Peoria, Illinois, and Joseph E. Daily,
Complainants,
vs.
Illinois Bell Telephone Company, corporation,
Defendant.

FINAL DECREE.

And now this day this cause coming on to be heard upon the bill of complaint filed by the complainants herein, the answer of the defendant filed thereto, and the replication of the complainants filed to said answer; and this court having heretofore issued a temporary injunction against the defendant herein in accordance with the prayer of said bill of complaint; and the defendant having thereafter filed its motion for a dissolution of said temporary injunction, which said motion was denied; and the defendant having prayed and perfected an appeal to the Appellate Court of the Second District of Illinois from the said order denying motion to dissolve said temporary injunction but which said order of this court was affirmed by said Appellate Court on said appeal. And now this cause coming on for further hearing, and the defendant having filed a motion praying dis-

missal of the bill of complaint herein for want of equity, which said motion has been denied by this court, and all of the parties being now present in court and represented by counsel, and a stipulation of facts having been entered into between the interested parties, and the said cause coming on to be heard upon the said bill of complaint and answer and replication and the stipulation of facts of the parties, and the court having heard the arguments of counsel and now being fuly advised in the premises, upon consideration thereof, doth find as follows:

First. That the complainants, Victor P. Michel and Joseph E. Daily, were on the date the bill of complaint was filed herein, prior thereto and since date, and still are, subscribers to the service of the Illinois Bell Telephone Company in the City of Peoria, County of Peoria, and State of Illinois, and each of them, together with approximately nineteen thousand other subscribers, are affected by the proposed increase of rates referred to in said bill of complaint.

Second. That on, to-wit, the date of the filing of said bill, prior thereto and since said date the defendant, Illinois Bell Telephone Company, was a public utilities corporation, engaged in the furnishing of telephonic communication between its subscribers in the City of Peoria, County of Peoria, State of Illinois, and elsewhere; that said defendant was on, to-wit, the date said bill was filed and ever since said date, operating its telephone business under the jurisdiction of the Illinois Commerce Commission of the State of Illinois, and the Statute of said State, entitled "an act concerning public utilities" in force July 1st, 1921, and that prior to July 1st, 1921, said business was carried on by the said defendant and its assignor, the Central Union Telephone Company, under the jurisdiction of the Public Utilities Commission of the State of Illinois, and under the provisions of the Statute

of said State, entitled "an act to provide for the regulation of public utilities," approved June 30th, 1913, and in force January 1st, 1914, and amendments thereto.

Third. That at the time of the filing of said bill of complaint herein and prior thereto, the defendant was lawfully, with the approval of the Illinois Public Utilities Commission, predecessor of the Illinois Commerce Commission, charging and collecting from its subscribers in said City of Peoria, for telephone service rendered, rates for its service as follows, to-wit:

Single Business	$6.00 per month
Two Party Business	5.00 per month
Rural Business	2.75 per month
Single Residence	3.25 per month
Two Party Residence	2.50 per month
Four Party Residence	2.25 per month
Rural Residence	2.00 per month

That on November 1st, 1921, the defendant notified the complainant, Victor P. Michel, as Mayor of said City of Peoria, that it was the intention of said defendant to increase said rates before that time charged, as above set forth, as charged in said bill of complaint, in accordance with the written notice, a copy of which is set forth in said bill of complaint, and that the said defendant intended to and would have, had it not been prevented from so doing by the injunction issued by the court in this cause, increased said rates to the complainants and its other subscribers as set forth in its said notice to the said Mayor aforesaid.

Fourth. That a comparative schedule of rates in force at the time of the filing of their bill, and the proposed increased rates are as follows:

	Old Rates	New Rates
Single Business	$6.00	$8.00
Two-party Business	5.00	6.75
Rural Business	2.75	4.00
Single Residence	3.25	4.00

Two-party Residence	2.50	3.25
Four-party Residence	2.25	2.50
Rural Residence	2.00	2.50

Fifth. That the history of the proceedings had and taken by the defendant, Illinois Bell Telephone Company and its assignor predecessor, Central Union Telephone Company, with reference to putting of said increased rates into effect is as follows:

That on or about the 1st day of April, A. D. 1920, the Central Union Telephone Company filed with the Public Utilities Commission of the State of Illinois, the proposed increased schedule of rates above in this stipulation set forth, for telephone service applying to all subscribers in the Cities of Peoria, Averyville, Bartonville, East Peoria and Peoria Heights, in the State of Illinois, the same to be effective May 1st, 1920.

Sixth. That said schedule of rates so filed was designated in the office of the Commission as I. P. U. C. No. 2, and provided for an increase of and over, and was designed to increase, the rates then and theretofore in existence of all subscribers of the telephones in the said several cities above mentioned.

Seventh. That said Telephone Company gave due notice to all persons affected by said proposed schedule of rates, and filed the same with the Commission, and kept the same open for public inspection, and in all respects complied with the statutes for the filing of rates, as in such case made and provided.

Eighth. That on, to-wit, the 9th day of April, 1920, said Public Utilities Commission entered an order in said cause suspending the effective date of said rate schedule to a later date, to-wit: August 29th, 1920, and that on July 28, 1920, said Public Utilities Commission entered a further order in said cause again suspending

the effective date of said rate schedule until February 26, 1921, and that on, to-wit: February 23, 1921, said Public Utilities Commission entered a further order again suspending the effective date of said rate schedule until August 26, 1921, and that on the 28th day of July, 1921, the Illinois Commerce Commission, as successor to the Public Utilities Commission prior to the Public Utilities Act of 1921, entered an order in said cause again suspending the effective date of said rate schedule until the 23rd day of February, 1922, and that on or about the 31st day of October, 1921, said Illinois Commerce Commission entered a further order in said cause, and served the same upon the defendant after November 1, 1921, permanently suspending, annulling and canceling said rate schedule so filed by Central Union Telephone Company on April 1, 1920, and designated as I. P. U. C. No. 2.

Ninth. That on or about the 23d day of December, 1920, the defendant herein, Illinois Bell Telephone Company, a corporation duly organized under the laws of the State of Illinois, by due and proper assignment, transfer and delivery, and by and with the authority and approval of the Public Utilities Commission of the State of Illinois, and in the manner as in the Statute and By-laws was provided, became the full and complete owner of all of the property, rights and privileges of the said Central Union Telephone Company, including the telephone exchange in and about the Cities of Peoria, Averyville, Bartchville, East Peoria and Peoria Heights, in the State of Illinois, and that the said Illinois Bell Telephone Company, the defendant has since that time been, and is now, the owner of said property, rights and privileges formerly owned and enjoyed by the said Central Union Telephone Company and subject to its duties and obligations in connection therewith, and that said de-

fendant, Illinois Bell Telephone Company has ever since that time been, and is now operating said telephone exchange.

Tenth. That on or about December 2, 1921, said defendant filed with the Illinois Commerce Commission an application for rehearing upon said rate schedule I. P. U. C. No. 2, which said application was on December 30, 1921, denied by said Commission.

Eleventh. That on or about December 31, 1921, said defendant filed notice of appeal from the order of the Commission denying said application for rehearing, which said appeal was taken to the Circuit Court of Peoria County, Illinois, and upon the hearing thereof was on April 6, 1922, by said Circuit Court reversed and remanded to said Illinois Commerce Commission for further hearing, with the right of all parties to the proceedings to introduce further evidence if they cared to do so, and for such further proceelings and final determination as may be proper, a certified record of said proceedings in said Circuit Court being duly returned to said Illinois Commerce Commission on or about April 6, 1922.

Twelfth. That on various dates thereafter, to-wit: Commencing June 6, 1922, and ending, to-wit: September 28, 1922, various hearings and proceedings were had under said rate schedule, the said Telephone Company introducing further evidence, the evidence on behalf of said Company being closed on said last mentioned date. The City of Peoria, as defendant to said proceedings, through its corporation counsel, advised the chairman of said Illinois Commerce Commission who presided at said hearing that the City of Peoria had not the means with which to employ engineers and other experts to make an inspection and valuation of the physical property, books and records of the said Company used by

it in connection with the rendition of its service in the said City of Peoria and then and there requested that said Illinois Commerce Commission through its proper officers, agents, auditors, engineers, etc., make an inspection and examination of all the physical properties and records used by said defendant in connection with the operation of its said telephone exchange in the said City of Peoria, Illinois, for the purpose of making an appraisal and report with reference to the value of said physical properties and the operation thereof, for rate making purposes to be introduced as evidence on the part of the said City of Peoria in this cause, and further requested of said Commission that the hearings in said cause be continued until such time as such Illinois Commerce Commission through its proper officers and agents had made the necessary examination and check as aforesaid of said properties of the defendant. Both of said requests made by the City of Peoria as aforesaid were allowed by said Illinois Commerce Commission and no hearings have been had since said date pending the completion of said inspection of said properties by said Illinois Commerce Commission as aforesaid; and that said cause is now pending before said Illinois Commerce Commission under the circumstances as above set forth.

Thirteenth. That on, to-wit: September 28, 1922, a motion by the said Illinois Bell Telephone Company asking the Commission to grant temporary increased rates was denied.

Fourteenth. That neither the Illinois Commerce Commission nor its predecessor, the Illinois Public Utilities Commission, has ever at any time up to and including the date of the entry of this decree made any finding in the above proceeding or any proceeding that such proposed increased rates in said stipulation referred to were justified or reasonable and that neither said Illinois Commerce Commission or said Public Utilities

Commission approved such proposed increased rates or allowed them to be put into force and effect; and that the cause by which the defendant, Illinois Bell Telephone Company, sought to put them into effect as hereinabove set forth, which was instituted before the Illinois Public Utilities Commission by the filing of such schedule of said proposed increased rates on the 1st day of April, A. D. 1920, is still pending before the Illinois Commerce Commission as above herein set forth.

It is, Therefore, Ordered, Adjudged and Decreed by the Court that the temporary injunction heretofore entered herein be and the same is hereby decreed to be made permanent in that the defendant herein, its agents, servants and attorneys, be and they are hereby restrained and enjoined from collecting or attempting to collect the rates, or any of them set out in the said schedule of rates and designated as new rates in said I. P. U. C. No. 2, except upon the authority or finding of the Illinois Commerce Commission that such rates are justified or reasonable pursuant to the Statute in such case made and provided, or except upon the authority or order of a court of competent jurisdiction.

It is Further Ordered, Adjudged and Decreed by the Court that the defendant pay all the costs of this suit.

And the defendant hereby excepts to the entry of the decree herein and prays an appeal to the Appellate Court of the Second District of the State of Illinois, which said appeal is allowed upon the filing in this court within thirty days hereof a certificate of evidence and a bond in the sum of Five Hundred Dollars, with surety to be approved by the court.

Dated at Peoria, Illinois, this 26th day of May, A. D. 1924.

(Signed) John M. Niehaus
Judge.

STATE OF ILLINOIS, } ss. No. 3370.
COUNTY OF PEORIA. }

IN THE CIRCUIT COURT OF THE COUNTY OF PEORIA,
STATE OF ILLINOIS.

I, George Sturch, Clerk of the Circuit Court, in and for said County of Peoria and State of Illinois, and the Keeper of the Records and Seal of said Court, do hereby certify that I have compared the foregoing copy of a certain decree filed on the 26th day of May, A. D. 1924, and entered in Chancery Record C-F on page 80 in a cause wherein Victor P. Michel as Mayor of the City of Peoria, Illinois, and Joseph E. Daily are complainants and Illinois Bell Telephone Company, a corporation, is defendant, with the original record thereof remaining in my office, and have found the same to be a correct transcript therefrom, and of the whole of such original record.

In Testimony Whereof, I have hereunto set my hand and the official seal, at Peoria, this 17th day of February, A. D. 1926.

(Signed) GEORGE STURCH,
(Seal) *Clerk of the Circuit Court.*

SUPREME COURT OF THE UNITED STATES.

Nos. 193 and 670.—October Term, 1925.

Frank L. Smith, Cicero J. Lindly, Hal W. Trovillon, et al., Etc., et al., Appellants, 193 *vs.* Illinois Bell Telephone Company.	Appeals from the District Court of the United States for the Southern District of Illinois.
Frank L. Smith, Cicero J. Lindly, Hal W. Trovillon, et al., Etc., et al., Appellants, 670 *vs.* Illinois Bell Telephone Company.	

[April 12, 1926.]

Mr. Justice Sutherland delivered the opinion of the Court.

The telephone company, an Illinois corporation, owns and operates a telephone system in the City of Peoria and vicinity. It brought suit on June 18, 1924, against appellants (members of the state Commerce Commission and Attorney General of the State of Illinois) to enjoin them from enforcing or attempting to enforce a schedule of rates alleged to be confiscatory, and from taking any steps or proceedings against the company by reason of the collection by it of rates and charges under another and higher schedule. A motion to dismiss the bill was overruled; and, upon the bill and attached exhibits and affidavits, appellants refusing to plead further, a permanent injunction in accordance with the prayer was granted by the lower court. The appeal in No. 670 is from that decree.

The appeal in No. 193 is from an order, previously entered, granting an interlocutory injunction. A motion to dismiss that appeal on the ground that the order for the interlocutory injunction had become merged in the final decree, was submitted but consideration postponed to the hearing on the merits. The motion is now

granted and the appeal in No. 193 dismissed. *Shaffer* v. *Carter*, 252 U. S. 37, 44; *Pacific Tel. Co.* v. *Kuykendall*, 265 U. S. 196, 205. In the cases cited, both interlocutory and permanent injunctions had been denied; here they were granted; but the record discloses no reason which prevents the same principle from being applicable.

The averments of the bill, which, upon this record, must be taken as true, disclose the following facts: The operations of the company were conducted with reasonable economy. For the year 1921, the net revenues, after payment of operating expenses and taxes, were, in round figures, $46,000; for the year 1922 there was a deficit of over $48,000: for 1923, a deficit of nearly $65,000; and a deficit for each month of the year 1924 preceding the filing of the bill. The fair value of the property, including working capital, material and supplies, and going value, was at least $3,800,000.

In July, 1919, the predecessor in ownership of the company filed with the commission a schedule of rates covering the telephone service in question, which the commission, by final order after a hearing, approved. Prior to that order, however, the predecessor of the company had filed with the commission a second schedule of increased rates, to become effective May 1, 1920. The commission first suspended the effective date of this schedule until August 29, 1920; and then, by successive orders, until February 26, 1921, August 26, 1921, and February 23, 1922. The present company, in December, 1920, succeeded to the property and rights of its predecessor.

During 1920, hearings were had before the commission in respect of the justice and reasonableness of the rates proposed by the second schedule, but no determination of the matter was reached. The commission, although often requested by the company to do so, thereafter failed and refused to hold further hearings, but on October 31, 1921, entered an order purporting permanently to suspend, cancel and annul the second schedule. A rehearing was applied for and denied.

Thereupon, an appeal was prosecuted to the Circuit Court of Peoria County; and that court, on April 6, 1922, reversed the commission's order and remanded the cause for further proceedings. The commission redocketed the cause and had hearings in June, July and September, 1922, after which the company filed its written motion requesting the commission to make effective a temporary schedule of rates pending a final determination. This motion was denied on September 28, 1922. On July 5, 1923, the

company called attention to the delay in the determination of the cause, and to the fact that the revenues derived from the operation of the Peoria exchange fell short of meeting its operating expenses, and requested the commission to set the cause for an early hearing. This request was ignored; and the commission ever since has failed and refused to determine the issues in the cause or to determine whether the rates and charges provided in the second schedule are just and reasonable; but has continued in effect the rates and charges contained in the first schedule approved by it. These rates not only do not yield a fair return, but are insufficient to pay the operating cost of rendering telephone service to the subscribers and patrons of the exchange. Finally, it is alleged that the company is deprived of its property without due process of law and is denied the equal protection of the law, in violation of the Fourteenth Amendment to the federal Constitution.

This conclusion, which necessarily results from the facts, is not seriously challenged, but a reversal of the decree below is sought on the ground that the company, prior to filing its bill, had not exhausted its legislative remedies. The argument seems to be that the second proposed schedule of rates, filed while the first was pending, purported to cancel the first schedule; that the order putting into force the rates in the first schedule was in effect a finding against the second and put an end to it; that no legal application for an increase of rates has since been made: therefore, when the suit was brought, nothing was before the commission upon which that body could lawfully act. The short answer is that the commission, after disposing of the first schedule, had uniformly treated the second as pending; had held hearings and made interlocutory orders in respect of it; had entered an order for its permanent suspension; after reversal by the state court on appeal, by which tribunal it was regarded as properly pending, had restored it to the docket for further proceedings; and had held further hearings. To say now that all this shall go for naught and that the company must institute another and distinct proceeding, would be to put aside substance for needless ceremony.

It thus appears that, following the decree of the state court reversing the permanent order in respect of the second schedule and directing further proceedings, the commission for a period of two years, remained practically dormant; and nothing in the circum-

stances suggests that it had any intention of going further with the matter. For this apparent neglect on the part of the commission, no reason or excuse has been given; and it is just to say that, without explanation, its conduct evinces an entire lack of that acute appreciation of justice which should characterize a tribunal charged with the delicate and important duty of regulating the rates of a public utility with fairness to its patrons but with a hand quick to preserve it from confiscation. Property may be as effectively taken by long-continued and unreasonable delay in putting an end to confiscatory rates as by an express affirmance of them; and where, in that respect, such a state of facts is disclosed as we have here, the injured public service company is not required indefinitely to await a decision of the rate-making tribunal before applying to a federal court for equitable relief. The facts, which the motion to dismiss conceded, present a far stronger case for such relief than any of the cases with which this court dealt in *Okla. Gas Co.* v. *Russell*, 261 U. S. 290, 293; *Prendergast* v. *N. Y. Tel. Co.*, 262 U. S. 43, 49; *Pacific Tel. Co.* v. *Kuykendall*, *supra*, p. 204; and *Banton* v. *Bell Line Ry.*, 268 U. S. 413, 415.

Some complaint is made to the effect that the decree attempts to bind persons not parties to the suit, including thousands of subscribers, and to prohibit appellants from enforcing in the future any legislative remedy for excessive charges, hereafter imposed, however unreasonable they may be. As to the first branch of the complaint, it is only necessary to say that the commission represents the public and especially the subscribers, and they are properly bound by the decree. *In re Engelhard*, 231 U. S. 646, 651. As to the other objection, there is nothing in the decree, rightly construed, which attempts to curtail or could curtail the legislative or rate-making powers of appellants to proceed hereafter under the state law, subject to such limitations, if any, as may be required by the doctrines of *res judicata*, ordinarily applicable in such cases.

Decree affirmed.

Mr Justice Stone took no part in the consideration or decision of these cases.

A true copy.

Test:

Clerk, Supreme Court, U. S.